TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 517

THE KANSAS CITY SOUTHERN RAILWAY COMPANY AND TEXARKANA AND FORT SMITH RAILWAY COMPANY, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

FILED OCTOBER 18, 1930

(35,439)

(35,439)

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[fol. a]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

No. 1450

THE KANSAS CITY SOUTHERN RAILWAY COMPANY and TEXARKANA AND FORT SMITH RAILWAY COMPANY, Plaintiffs,

vs.

THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

Transcript

[fols. 1-3] Citation in usual form showing service on Wm. L. Vendeventer et al., filed Sept. 27, 1930, omitted in printing.

[fol. 3-1] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI

In Equity. No. 1450

THE KANSAS CITY SOUTHERN RAILWAY COMPANY and TEXARKANA AND FORT SMITH RAILWAY COMPANY, Petitioners,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

PETITION—Filed Feb. 7, 1930

To the Honorable the Judges of the District Court of the United States for the Western Division of the Western District of Missouri:

The petitioners file this their petition against the United States of America, and the Interstate Commerce Commission, hereinafter called the "Commission," which is an administrative tribunal existing under and by virtue of

the Interstate Commerce Act and charged with its administration and enforcement, to enjoin, set aside, annul and suspend, in whole or in part, two certain orders, herein- [fol. 3-2] after set forth, of the Commission, dated November 4, 1929 and July 30, 1929, respectively, and thereupon petitioners complain and say:

1. The petitioners are corporations duly organized and existing under the laws of the following states: The Kansas City Southern Railway Company, herein for convenience referred to as the "Southern Company," under the laws of the State of Missouri; and the Texarkana and Fort Smith Railway Company, herein for convenience referred to as the "Texarkana Company," under the laws of the State of Texas. The Southern Company owns all the capital stock, except qualifying shares, of the Texarkana Company; and they, together with certain other minor properties, constitute what is known as the Kansas City Southern Railway System, extending from Kansas City, Missouri, to Port Arthur, Texas, and into and through the Western District of Missouri. Both of the petitioners are common carriers, subject to the Act of Congress of February 4, 1887, now designated as the Interstate Commerce Act, and the acts supplemental thereto and amendatory thereof. They are herein sometimes, for convenience, collectively referred to as the "petitioner."

2. One of the petitioners, the Southern Company, has its principal operating office in the City of Kansas City, in the Western Division of the Western District of Missouri. The matters complained of before the Commission arose in part in said district. The order of the Commission which is the subject-matter of this petition was made by the Commission upon its own motion, and not upon the petition of any party; being designated on the docket of the Commission as No. 17757, "In the Matter of Use of [fol. 3-3] Private Passenger Train Cars." The suit is brought against the defendant United States of America in said Western Division of the Western District of Missouri in accordance with the provisions of the Urgent Deficiencies Act of October 22, 1913, and petitioner invokes the jurisdiction of this court under the provisions of said Act and under the provisions of the Interstate Commerce Act, as well as under its general equity powers.

3. On the 7th day of December, 1925, the Commission, on its own motion, instituted an investigation into and concerning the use of private passenger train cars, including office cars, in the transportation of persons, with a view of making such order or orders in the premises as might be deemed by it warranted.

4. On the 23rd day of July, 1928, a proposed report in said proceeding was submitted to the Commission, and was served upon petitioner and all other carriers, and sixty days from the date of the service thereof were allowed for the filing of exceptions, which time was afterwards extended so as to include December 22, 1928. On the last-mentioned date, exceptions were duly filed and subsequently heard, and the Commission, on June 21, 1929, handed down its report, set forth in 155 I. C. C., at pages 775 to 811, inclusive, to which report reference is hereby made and petitioner prays that said report may be deemed and considered a part hereof, with like affect as if herein set forth in full.

5. On the 4th day of November, 1929, the Commission entered an order in the case, being one of the orders sought to be enjoined herein, a copy of which, marked Exihbit A, is herewith filed as a part of this petition, requiring the carriers named in the list attached thereto, including peti-[fol. 3-4] tioner, to cease and desist, on or before January 15, 1930, and thereafter to abstain, from the transportation or movement of private passenger train cars, including office cars, as hereafter defined, of another carrier free or at other than published tariff rates. By a later order the Commission extended the effective date of said order to February 13, 1930.

6. On the 30th day of July, 1929, the Commission entered an order, "In the Matter of Regulations to Govern the Forms and Recording of Passes, Issue of 1917," wherein it prohibited the issuance by a carrier of a car pass, except for cars owned by the issuing carrier or held by it under lease, for use in its business as a common carrier, a copy of which, marked Exhibit B, is attached hereto and made a part of this petition. This order, the effect of which is to prohibit the issue of a car pass for the office car of another carrier, is one of the orders sought to be enjoined herein.

7. By said orders your petitioner and other carriers, subject to the Interstate Commerce Act, are prohibited from transporting or moving, in the western District of Missouri, as well as in all other parts of the United States, private passenger train cars, including office cars, of another carrier free or at other than published tariff rates under any conditions or circumstances whatever.

8. Petitioner and many of the other railway companies in the country for many years have been, and now are, the owners of valuable office cars, which are customarily used by their officers and employees in the interest of or connected with the operation of their railroads. Said office cars constitute, in effect, offices on wheels for officials and employees whose duties require considerable travel over their [fol. 3-5] own lines and over the lines of other carriers, and they constitute an important and necessary facility for the discharge of such duties. Such cars contain eating and sleeping accommodations for the officers and employees who occupy them, and are otherwise equipped to carry office files, documents, correspondence, clerical force, and all other facilities for the transaction of the usual and ordinary business of the officials of the owning company, in substantially the same manner as such business is ordinarily conducted in offices. By the use of these cars, the officials and employees are enabled to transact their business continuously and without interruption while moving over their own lines of railroad, as well as during necessary and convenient movements over the lines of foreign carriers.

In numerous instances it has been, and is, necessary for the officials and employees of railway companies, including petitioner, in the proper discharge of their duties, to travel over foreign lines, and, in the course of such transportation, to conduct and carry on without interruption the usual and ordinary business of their companies, respectively. The efficient and economical conudct of such business requires eating and sleeping accommodations for such officials and employees, and the presence of office equipment, files, correspondence and clerical force. The office car is essentail for this purpose. Its proper and legitimate use facilitates the dispatch of business and prevents unnecessary waste of time and effort.

As one of many illustrations which might be given of the proper and legitimate use of office cars in carrying on the business of a railway company in an efficient and economical manner, petitioner shows that the executive head of the [fol. 3-6] Southern Company has long resided and now resides and has his office in the City of New York, where its Board of Directors holds meetings, monthly or oftener; and that the operating head of the Southern Company, who is a member of said Board of Directors, has long resided, and now resides, in Kansas City, Missouri. It is frequently necessary for the operating head of the company, with certain officers and employees, to travel to New York to attend meetings of the Board of Directors and for the purpose of consulting with the executive head of the company; and it is likewise necessary for the executive head of the company, with certain officers and employees, to travel between New York City and Kansas City and on the line of petitioner, for the purpose of inspection trips and other matters of business. It has been the practice in the past, for reasons of economy and convenience, for such travelling between New York City and Kansas City on the part of the executive head of the company and of its operating head, and other officers and employees, to be done to a considerable extent, in office cars, transported without charge over foreign lines between the two points, so that the business conducted by such officials might be carried on continuously and without interruption. If the Commission's orders herein complained of are permitted to go into effect, the practice above referred to, as well as all other movements of office cars over foreign lines, must necessarily be discontinued, or conducted at published tariff rates of transportation, which would be so large as to be prohibitive; and the travelling of railway officials and employees in office cars over foreign lines will cease, resulting in serious loss and disadvantage to petitioner and other carriers, [fol. 3-7] and in unnecessary interruption and delay in the transaction of petitioner's business and the performance of its public duties.

9. For many years it has been the custom and practice of many carriers, including petitioner, when requested so to do, to accept and move, when they can conveniently do so, the office cars owned by foreign lines and occupied by

officers and employees of such foreign lines, traveling in the interest of or connected with the operation of such foreign lines. For many years, also, it has been the practice of many carriers, including petitioner, when desiring to have one of its office cars, occupied by its officers and employees and engaged in the transaction of the business of the road, moved over a foreign line, to request such foreign line to make such movement; and such request ordinarily has been complied with by such foreign line, to the extent that it was able to do so without interfering with its own operations. By the uniform practice of many years' standing, such movements of office cars over foreign lines have been made by such foreign lines, as a matter of reciprocal accommodation and convenience, and without making any charge therefor. Passes, both for the free transportation of the officers and employees and for the free movement of the office car, are customarily issued by such foreign lines. Office cars when so moving over foreign lines are not articles of commerce in the course of transportation, but are instruments or facilities of the owning line, necessary and convenient for the transaction of its business. In so far as the Commission may have found the practice of moving office cars, as herein described, to be illegal or discriminatory or prejudicial, such finding is unsupported by any substantial evidence.

[fol. 3-8] 10. Petitioner further states that neither it nor any of the other carriers in the country have ever held themselves out, by published tariffs or otherwise, as common carriers of the office cars of other railway companies; and that they are under no enforceable legal obligation to accept and move such cars. They have filed tariffs with the Commission covering all transportation of persons and property which they hold themselves ready to perform for all alike, as required by paragraph (1) of Sec. 6 of the Interstate Commerce Act, but such tariffs do not now, and never have, provided for or covered the movement of the office cars of another carrier. Nor have they, aside from such tariffs, actually moved such office cars in the capacity of common carriers. All such movements of office cars over a foreign line heretofore made have been upon special request in each individual instance, which request

the foreign line was at liberty to grant or refuse in its discretion. In making such movements, the foreign line does not act as a common carrier for hire, but in its capacity of a private carrier, and, as such, may lawfully make the movement on such terms as the two interested carriers may mutually agree upon, and it has been the long continued and uniform practice throughout the country to make such movements without making any charge whatsoever therefor. Such office cars do not become or constitute any part of the common carrier equipment of such foreign lines and are not available for the general use of passengers traveling on such foreign lines. For these reasons the movement of office cars over foreign lines, as herein set forth, is a subject-matter over which the Commission is not vested with the power of regulation, and the Commission's order above referred to is to [fol. 3-9] that extent beyond the Commission's authority, and void.

11. The practice of moving the office car of another carrier, occupied by the officers and employees of the latter in the discharge of their duties as such, without imposing any charge therefor and upon passes issued by the transporting carrier covering both car and officials, has existed from the earliest day of steam railroads, and was generally known to exist and was recognized as lawful and proper at the time of the original enactment by Congress of the Interstate Commerce Act in 1887, and continuously thereafter until the making by the Commission of its order herein complained of. In the Act of 1887, it was, and is, expressly provided that nothing in it shall prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees. Congress enacted this provision of the Act of 1887 with full knowledge of the uniform and long continued practice of moving the office cars and officers of another line on free passes, and it is deemed thereby to have given its approval to the issuance of passes for the free movement of an office car, as well as for its occupants.

In the Hepburn Act of June 29, 1906, Congress made detailed provision, effective January 1, 1907, for the issue of interstate passes to designated classes of persons; and

this Act contains a proviso that it shall not be construed to prohibit the interchange of passes for the officers, agents and employees of common carriers and their families. Congress enacted this provision with full knowledge of the uniform and long continued practice of moving the office cars and officers of another line on free passes, and [fol. 3-10] is deemed thereby again to have given its approval to the issuance of free passes for the movement of an office car, as well as for the transportation of the officers and employees occupying the car.

On June 30, 1908, in a Conference Ruling promulgated and published for the guidance of carriers, the Commission issued its regulations for the issuance of passes, and expressly provided for the issuance of car and party passes, in the following language:

"Each pass issued must bear upon its face the name of some person belonging to a class named in section 1 of the act as eligible to receive free transportation. In addition to such person so named a pass may also carry not to exceed a specified number of unnamed persons of any class eligible to receive free transportation; the number and the class to which such person belongs being specified upon the face of the pass—that is to say, passes in the following forms will be recognized by the Commission as legal:

"Pass John Smith, President, car, and five officers and employees of the X. Y. Z. Railway."

The foregoing regulation was understood by the carriers and by the public generally as authorizing the issuance by one carrier of a pass for the free movement over its line of the car of another carrier occupied by the officers and employees of such carrier; and such is the reasonable import of the language employed. This Conference Ruling was continued in effect by the Commission continuously from the date of its promulgation until it rescinded all of its Conference Rulings on December 26, 1928. During this period of 20 years, as well as prior thereto, the carriers of the country continued to move the office cars, as herein de- [fol. 3-11] fined, of other carriers on free passes, without making any charge therefor, with the full knowledge of Congress as well as the Commission, without any intimation from them, or either of them, or from any other official

source, that the practice was not a proper and lawful one, until the Commission filed its report herein, as above stated. Congress, with full knowledge of this long continued and uniform practice, and with full knowledge of the said Conference Ruling, and during the long period in which the ruling has been in force, has repeatedly and on numerous occasions amended the Interstate Commerce Act, and substantially re-enacted it, particularly sections 1 and 22 thereof, dealing with free transportation, without the expression of any dissent from said practice or said Conference Ruling, and is thereby deemed and held to have adopted and incorporated into the amended act the administrative interpretation so placed upon it by the Commission. Petitioners show, therefore, that the law permits the free movement of office cars, as herein defined, on foreign lines, and that the Commission's order is in conflict therewith, and, for that reason, illegal and void.

12. By paragraph (8) of Sec. 16 of the Interstate Commerce Act, heavy pecuniary penalties are imposed on any carrier, as well as on its officers, representatives or agents, who knowingly fails or neglects to obey any such order of the Commission as that entered by it, as hereinbefore alleged, on the 4th day of November, 1929, and as that entered by it as aforesaid on the 30th day of July, 1929, to-wit, a forfeiture to the United States of the sum of five thousand dollars for each offense, every distinct violation being de- [fol. 3-12] fined as a separate offense and, in case of a continuing violation, each day to be deemed a separate offense.

13. Your petitioner further shows that said order of November 4, 1929, and said order of July 30, 1929, are erroneous, and not supported by evidence or authorized by law, are beyond the power or authority of the Commission, and are invalid in so far as they, or either of them, undertake to declare unlawful and to forbid the transportation or movement by a carrier subject to the Interstate Commerce Act of office cars, owned by another such carrier free or at other than published tariff rates when occupied by officers or employees holding proper transportation and traveling in the interest of or connected with the operation of their railroad; and the effect of said orders, if enforced, will be to deprive your petitioner and other carriers similarly situated of the right to make a lawful use of their respective

properties and to make lawful contracts of transportation in relation thereto, and consequently to deprive them of their properties without due process of law, contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

Wherefore your petitioners pray——

1. That the United States of America and the Interstate Commerce Commission be made parties defendant to this petition and that subpoenas in chancery issue out of and under the seal of this Honorable Court, directed to the defendants, as required by law, and that due and proper service of such process and of this petition be forthwith made by filing a copy thereof in the office of the Secretary of the Commission, and another copy in the Department of Jus- [fol. 3-13] tice, as in the District Court Jurisdiction Act provided, and that thereby the defendants, and each of them, be required, on or before a date to be specified in such subpoenas or notices, to appear herein and answer this petition, but not under oath, answer under oath being hereby expressly waived.

2. That a temporary or interlocutory injunction be entered herein, restraining, enjoining and suspending, until the further order of this court, the effect and enforcement of said orders of the Commission, in so far as they are hereinbefore complained of as illegal.

3. That after final hearing this court adjudged, order and decree that said findings of the Commission and its said orders are and have at all times been beyond the lawful authority of the Commission in so far as they, or either of them, undertake to declare unlawful and to prohibit the transportation or movement free and without charge by one carrier subject to the Interstate Commerce Act of the office car of another such carrier when occupied by its officers and employees, lawfully entitled to transportation, and traveling in the interest of or in connection with the business of such railroad; and that said orders, to the extent herein complained of as unlawful, be perpetually set aside, suspended and annulled, and the enforcement thereof perpetually enjoined.

4. That your petitioners, and each of them, may have such other and further relief in the premises as in equity

and justice they are entitled to receive and as may be deemed by this Honorable Court to be adequate and proper under the circumstances.

[fol. 3-14] And, as in duty bound, your petitioners will ever pray, etc.

The Kansas City Southern Railway Company, Texarkana and Fort Smith Railway Company, by Frank H. Moore, A. F. Smith, Cyrus Crane, Solicitors. Samuel W. Moore, of Counsel.

Duly sworn to by C. E. Johnston. Jurat omitted in printing.

[fol. 3-15] EXHIBIT "A" TO PETITION

Order

AT A GENERAL SESSION OF THE INTERSTATE COMMERCE COMMISSION, Held at Its Office, in Washington, D. C., on the 4th Day of November, A. D. 1929

No. 17757

In the Matter of Use of Private Passenger Train Cars

It appearing, That, in compliance with the statute in such case made and provided, this commission, upon its own motion, entered into an investigation into and concerning certain questions arising under Sections 2, 3, 6 and 22 of the Interstate Commerce Act as to the transportation or movement of private passenger cars, including so-called office cars, of one carrier subject to the Act by another such carrier free or at other than published tariff rates, and relating to the enforcement of the foregoing provisions of the Act in that regard; and

It further appearing, That a full investigation of the matters and things involved was had, in the course of and pursuant to which a proposed report was submitted to the Commission, whereupon the carriers named in the list hereto attached appeared and by counsel excepted to said report, on which exceptions argument, oral and in writing, was had; and

It further appearing, That on the 21st day of June, 1929, this Commission after full consideration overruled said exceptions and made and filed a report containing its conclusions thereon, which report is hereby referred to and [fol. 3-16] made a part hereof, and therein decided:

1. That the transportation or movement of private passenger cars, including so-called office cars, of one carrier subject to the Interstate Commerce Act by another such carrier free or at other than published tariff rates is contrary to the provisions of the Interstate Commerce Act;

2. That it is unjustly discriminatory and unduly preferential and prejudicial to haul such private cars of other carriers free, or at less than published tariff rates, while charging certain minimum fares and revenues for the movement of privately owned or chartered cars; and

3. That the transportation of persons in such private passenger cars, including berth and other accommodations, at the rate charged passengers provided only with ordinary coach accommodations is unjustly discriminatory and unduly preferential and prejudicial.

In its report the Commission declared that no order appeared to be necessary. On further and subsequent consideration, however, the Commission is of opinion that an order in the premises is proper and appropriate, and, the exceptants to the said proposed report having appeared before the Commission and expressly waived any further hearing in the premises,

It is ordered, That the carriers named in the list herein before referred to and attached hereto, on behalf of which such exceptions were filed and argument heard and on whose behalf a waiver of further hearing has been expressly made, be, and each of them hereby is, notified and required to cease and desist, on or before January 15, 1930, and [fol. 3-17] thereafter to abstain, from the transportation or movement of private passenger train cars, including so-called office cars, of another carrier free or at other than published tariff rates.

And it is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 3-18] EXHIBIT "B" TO PETITION

INTERSTATE COMMERCE COMMISSION, WASHINGTON

In the Matter of Regulations to Govern the Forms and Recording of Passes, Issue of 1917

At a Session of the Interstate Commerce Commission, Division 4, Held at Its Office, in Washington, D. C., on the 30th Day of July, A. D. 1929

The matter of issuing passes for private passenger train cars being under consideration:

It is ordered: That the Regulations to Govern the Forms and Recording of Passes, Issue of 1917, prescribed under an order of the Commission, entered on July 8, 1916, be and the same are, hereby amended by adding between lines 11 and 12 in paragraph 15 the following:

A car pass may be issued only for cars owned by the issuing carrier or held by it under lease for use in its business as a common carrier. It may not be issued for other cars. This provision is not to be construed as prohibiting the issuance of passes for cars of lines operated as a part of the same system. See In the Matter of the Use of Private Passenger Train Cars, 155 I. C. C. 775.

It is further ordered: That this order shall become effective on August 1, 1929.

By the Commission, Division 4.

George B. McGinty, Secretary.

[fol. 4] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF THE UNITED STATES OF AMERICA—Filed Mar. 7, 1930

United States, one of the above named defendants, for answer to the petition filed therein against it says:

I

United States admits for the purposes of this suit, the allegation of the opening paragraph and paragraphs 1 to

7, both inclusive, of the petition, except this: It denies that the suit instituted by the petition is brought under or invoked the general equity jurisdiction or powers of this Court.

II

United States alleges that the matters and things set forth and alleged in paragraphs 8, 9 and 10 of the petition, are argumentative, based on speculation and conclusion, and are irrelevant, incompetent and immaterial, and as to them, therefore, United States neither admits nor denies, except this:

[fol. 5] (a) It denies the allegation in said paragraph 8, that said orders of the Interstate Commerce Commission require discontinuance of the movement of so-called private passenger cars, or office cars of common carriers on the lines of other common carriers, and alleges that, on the contrary, petitioners and all other common carriers are free, under the terms of said orders, to continue the practice of transporting such cars if, as, and when they so desire, upon collection or payment of published tariff rates therefor.

(b) It denies the allegation in said paragraph 9, that:

In so far as the Commission may have found the practice of moving office cars, as herein described, to be illegal or discriminatory or prejudicial, such finding is unsupported by any substantial evidence.

(c) It denies the allegation in said paragraph 9, that:

Office cars when so moving over foreign lines are not articles of commerce in the course of transportation.

(d) It admits the allegation in said paragraph 10 that said tariffs of petitioners and other carriers do not expressly name charges on carrier-owned private or office cars transported by other carriers for exclusive use of the owning carriers or their officials, but alleges that said tariffs do name certain minimum charges for the transportation of privately owned or chartered cars transported for the exclusive use of special parties, and admits that said tariffs do not define the term "privately owned cars"; it further

admits that it has long been the practice of carriers throughout the country to move private or office cars of other car-
[fol. 6] riers without making any charge therefor; and admits and alleges that when so transported, such cars do not become or constitute any part of the common carrier equipment of the carriers transporting them; and further admits that such cars are not available for general use of passengers traveling on the lines of the transporting carriers.

(c) It denies the allegation in said paragraph 10, that:

• • • the movement of office cars over foreign lines, as herein set forth, is a subject-matter over which the Commission is not vested with the power of regulation, and the Commission's order above referred to is to that extent beyond the Commission's authority and void.

III

United States alleges that the matters and things alleged in paragraph 11 of the petition, in substance, that the free transportation by carriers of office cars of other carriers is a practice which has existed for many years, "and was recognized as lawful and proper at the time of the original enactment by Congress of the Interstate Commerce Act in 1887, and continuously thereafter until the making by the Commission of its order herein complained of"; that by providing in that Act that railroad companies might lawfully exchange passes or tickets with each other for the transportation of their officers and employees, Congress acted "with full knowledge of the uniform and long continued practice of moving the office cars and officers of another line on free passes, and it is deemed thereby to have given its approval to the issuance of passes for the free movement of an office car, as well as for its occupants;" and that the Commission is deemed to have approved said
[fol. 7] practice, are all argumentative, speculative, and are incompetent, irrelevant and immaterial and do not require answer; therefore, as to them, United States neither admits nor denies, except that: It denies the allegation in said paragraph 11, that:

• • • the law permits the free movement of office cars, as herein defined, on foreign lines, and that the Commis-

sion's order is in conflict therewith, and, for that reason, illegal and void.

United States says that if the allegations of said paragraph 11, should become relevant, material or competent, it will demand strict proof of each and all of them.

Further and affirmatively answering the allegations of said paragraph 11, United States says that although the Hepburn Act therein mentioned did provide for the interchange by common carriers of passes or tickets for the free transportation of their officers and employees and certain other described classes of persons, said act did not, nor does any other statute of the United States provide that carriers may transport each other's private or office cars free of charge.

IV

United States for answer to paragraph 12, of the petition, admits and alleges that paragraph (8) of Section 16 of the Interstate Commerce Act provides, in the following language, that:

"(8) Any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of sections 3, 13, or 15 of this Act shall forfeit to the United States the sum of $5,000 for each offense. Every distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense.

Further answering said paragraph 12, United States denies that said order issued July 30, 1929, by the Commis- [fol. 8] sion was made under either of said sections 3, 13, or 15 of said Act; and alleges that said order was made under Section 20 of said Act, in that it was an amendment to the Commission's Regulations to Govern the Form and Recording of Passes which had been prescribed pursuant to said Section 20.

V

United States denies each and every allegation made and contained in paragraph 13, of the petition.

VI

Except as expressly admitted herein, United States denies each and every allegation in the petition which is or may be inconsistent or in conflict with either the allegations herein made, or the statements, findings and conclusions set forth and contained in said orders of the Commission.

Wherefore, having fully answered, United States prays that the relief sought be denied and the petition dismissed with cost to petitioners.

Elmer B. Collins, Special Assistant to the Attorney General. John Lord O'Brien, The Assistant to the Attorney General. Wm. L. Vandeventer, United States Attorney.

[fol. 9] *Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

[fol. 10] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed Mar. 10, 1930

The Interstate Commerce Commission, one of the defendants in the above-entitled suit, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies contained in the petition, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering the opening paragraph and subdivisions numbered 1 to 3 inclusive, of the petition, the Interstate Commerce Commission, hereinafter called the Commission, admits the truth of the allegations therein contained, except that it denies that this suit has been brought and denies

that it may be maintained, under the general equity jurisdiction of the court.

II

Answering subdivisions numbered 4 and 5, inclusive, of the petition, the Commission admits and alleges that it made and entered the report of June 21, 1929, and the order of November 4, 1929, therein referred to; admits that the document attached to the petition, marked Exhibit "A", is a true and correct copy of its said order of November 4, 1929; and respectfully refers the Court to said document for information as to the contents and provisions of said order.

[fol. 11] III

Answering subdivision numbered 6 of the petition, the Commission admits that it made and entered the order of July 30, 1929, therein referred to as being one of the orders sought to be enjoined; admits that the document attached to the petition, marked Exhibit "B", is a true and correct copy of said order; admits and alleges that said order amended, in the particulars as shown in said copy so attached to the petition, the Commission's "Regulations to Govern the Forms and Recording of Passes, Issue of 1917," a true copy whereof is attached to this Answer and made a part hereof, marked Exhibit "A". Except as so admitted the Commission denies the truth of the allegations contained in said subdivision.

IV

Answering subdivision numbered 7 of the petition, the Commission denies that the statement therein contained in respect of its said orders of November 4, 1929, and of July 30, 1929, accurately interprets said orders. The Commission respectfully refers the Court to the copies of said orders attached to the petition, for full and correct information in the premises.

V

Answering subdivision numbered 8 of the petition, the Commission alleges that the allegations therein contained

are incompetent, irrelevant and immaterial and, therefore, neither admits nor denies the truth thereof, except that the Commission denies the allegations contained in the last sentence of said subdivison relative to the future effects of the orders of the Commission.

VI

Answering subdivision numbered 9 of the petition, the Commission denies the truth of the allegations that "movements of office cars over foreign lines have been made by such foreign lines, as a matter of reciprocal accommodation and convenience," in so far as it is an allegation that the practice of moving free the office cars of other carriers is [fol. 12] based on a reciprocal exchange as between carriers of an equivalent amount of free service; denies the truth of the allegation that "Office cars when so moving over foreign lines are not articles of commerce," and denies the truth of the allegation that "In so far as the Commission may have found the practice of moving office cars, as herein described, to be illegal or discriminatory or prejudicial, such finding is unsupported by evidence."

VII

Answering the allegation, in subdivision numbered 10 of the petition, that the tariffs of petitioners and other carriers do not provide for or cover the movement of the office cars of other carriers, the Commission alleges that the tariffs of petitioners and other carriers name certain minimum charges on privately-owner or chartered cars, transported for the exclusive use of special parties, but the Commission admits that said tariffs do not define the term privately-owned cars, and admits that said tariffs do not expressly name charges on carrier-owned private or office cars transported for the exclusive use of the owning carriers or their officials. Further answering said subdivision 10, the Commission admits that the movements over foreign lines of the private or office cars of other carriers have been made upon special request; admits that it has been the long continued and uniform practice throughout the country to make such movements without making any charge whatsoever therefor; admits and alleges that such

cars do not become or constitute any part of the common carrier equipment of such foreign lines and admits and alleges that such cars are not available for the general use of passengers travelling on such foreign lines. Except as so expressly alleged and admitted, the Commission denies the truth of each of and all the allegations contained in said subdivision 10.

VIII

Answering subdivision numbered 11, the Commission [fol. 13] admits that the practice of making the private or office cars of other carriers subject to use by passholders, without imposing any charge therefor, existed at the time of the making of its order herein complained of and for a long time prior thereto, admits that the statements in said subdivision relating to the provisions permitting the railroads to interchange passes contained in the original Act to Regulate Commerce, 1887, and in the Hepburn Act of 1906, are substantially correct, but for full and complete information in the premises the Commission respectfully refers the Court to said Acts of Congress, admits that its Conference Rulings up to the time that they were rescinded, namely, December 20, 1926, prescribed the form of pass set forth in said subdivision, admits that since the original enactment in 1887 of the Act to Regulate Commerce, Congress has on numerous occasions amended said Act. Except as so expressly admitted, the Commission denies the truth of each of and all the allegations contained in said subdivision.

IX

Answering subdivision numbered 12 of the petition, the Commission denies that its order of July 30, 1929, is an order within the meaning of paragraph (8) of section 16 of the Interstate Commerce Act. The Commission alleges that penalties prescribed by said paragraph are applicable only to violation of orders made by the Commission under sections 3, 13 or 15 of the Act, that its said order of July 30, 1929, was not made under any of these sections but was made under section 20 of said Act, in that it was an amendment to its Regulations to Govern the Form and Recording of Passes, which had been prescribed in accordance with said section 20.

X

Answering subdivision numbered 13 of the petition, the Commission denies the truth of each of and all of the allegations therein contained.

Except as herein expressly admitted, the Commission denies each of and all the pertinent and material allega- [fol. 14] tions contained in the petition in so far as they conflict either with the allegations or denials of the Commission herein contained or with the statements of fact contained in the Commission's said report of June 21, 1929.

All of which matters and things the Commission is ready to aver, maintain, and prove as this honorable Court shall direct, and hereby prays that said petition be dismissed.

Interstate Commerce Commission, by Nelson Thomas, Attorney. Daniel W. Knowlton, of Counsel

Duly sworn to by Frank McManamy. Jurat omitted in printing.

REGULATIONS

TO GOVERN THE

FORMS AND RECORDING OF PASSES

PRESCRIBED BY THE

INTERSTATE COMMERCE COMMISSION

IN ACCORDANCE WITH SECTION 20 OF THE ACT TO REGULATE COMMERCE

ISSUE OF 1917

Effective on January 1, 1917

(Superseding and canceling Regulations to Govern the Issuing and Recording of Passes of Steam Roads)

WASHINGTON
GOVERNMENT PRINTING OFFICE
1916

24

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1916

THE INTERSTATE COMMERCE COMMISSION.

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ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 8th day of July, A. D. 1916.

The subject of a uniform system for the issuing and recording of passes to be prescribed for carriers being under consideration, the following order was entered:

It is ordered, That the following Regulations to Govern the Forms and Recording of Passes, Issue of 1917, be, and the same are hereby, approved; that a copy thereof duly authenticated by the Secretary of the Commission be filed in its archives, and a second copy thereof, in like manner authenticated, in the office of the Division of Carriers' Accounts; and that each of the said copies so authenticated and filed shall be deemed an original record thereof.

It is further ordered, That the said Regulations be, and are hereby, prescribed for the use of carriers by rail (including electric railways), carriers by water, and sleeping car companies, subject to the provisions of the amended act to regulate commerce in the issuing and recording of passes; that each and every such carrier and each and every receiver or operating trustee of any such carrier be required to issue all passes and keep all pass records in conformity therewith; and that a copy of the said Regulations be sent to each and every such carrier and to each and every receiver or operating trustee of any such carrier.

It is further ordered, That the said Regulations are, and by virtue of this order do become, the lawful rules according to which all passes are to be issued and all pass records are to be kept; that each and every person directly in charge of the free transportation of any such carrier or of any receiver or operating trustee of any such carrier is hereby required to see to, and under the law is responsible for, the correct application of the said regulations in the issuing and recording of passes; and that it shall be unlawful for any such carrier or for any receiver or operating trustee of any such carrier, or for any person directly in charge of the free transportation of any such carrier or of any receiver or operating trustee of any such carrier, to issue any passes or to keep any pass records except in the manner and form in the said Regulations set forth and hereby prescribed, and except as hereinafter authorized.

It is further ordered, That any such carrier or any receiver or operating trustee of any such carrier may adopt additional record forms: *Provided, however*, That a list of such additional record forms, showing their use and their purpose, be first filed in the office of the Division of Carriers' Accounts, subject to disapproval by the Commission.

It is further ordered, That the said Regulations to Govern the Forms and Recording of Passes, Issue of 1917, shall become effective on January 1, 1917, and that this order shall supersede and cancel the orders of June 8, 1911, March 11, 1912, May 6, 1912, and June 28, 1915, in the matter of regulations to govern the issuing and recording of passes of steam roads.

By the Commission.

[SEAL.] GEORGE B. MCGINTY,
Secretary.

REGULATIONS TO GOVERN THE FORMS AND RECORDING OF PASSES.

These regulations apply to all carriers of classes designated in the order whether passes are issued or are honored for transportation wholly within one state or otherwise, and whether the operated mileage or termini of any such carrier be located entirely within the limits of one state or otherwise.

Nonrevenue passenger service.

1. All nonrevenue passenger service, whether transportation, meals, or sleeping, parlor, or other accommodations, except as provided in paragraphs 39 and 42 to 51, inclusive, furnished by steam roads, electric railways, carriers by water, and sleeping car companies, subject to these regulations, shall be covered by passes as hereinafter prescribed.

General classes of passes.

2. Passes issued shall consist of not more than eight general classes, viz:

1. Annual or term passes for passage only.
2. Annual or term passes for meals and sleeping, parlor, and other accommodations, but not including passage.
3. Annual or term passes for passage, including meals and sleeping, parlor, and other accommodations.
4. Trip passes for passage only.
5. Trip passes for meals and sleeping, parlor, and other accommodations, but not including passage.
6. Trip passes for passage, including meals and sleeping, parlor, and other accommodations.
7. Commuter passes.
8. Telegraph passes.

(*a*) *Annual* passes are those good until the end of the calendar year without restriction as to the number of trips.

Term passes are those good for a specified period of time less than a year and without restriction as to the number of trips.

Trip passes are those good for a specified period of time and restricted to a single trip or to one round trip.

Commuter passes are those good for a specified period of time and restricted as to the number of trips. This form of pass need not be confined to suburban territory, but may be issued over any portion of a carrier's line.

Telegraph passes are those issued upon telegraphic or telephonic authority and restricted to a trip in one direction within a specified period of time.

(*b*) Carriers are at liberty to enlarge this classification of pass forms, provided it is done by subdividing any of the general classes, and provided further, that the record of pass stock received and distributed shows the distinctive features of pass forms so subdivided. (See par. 12.) It is not desired that carriers file with the Commission samples of their passes.

(*c*) If the number of passes to be issued for meals and sleeping, parlor, and other accommodations, including passage, is relatively small, carriers are permitted to indorse a pass of any class prepared for passage only so as to include such accommodations as are to be furnished. (See par. 54.)

Officers issuing and requesting passes.

3. Each carrier shall file with the Commission, on or before January 1 of each year, (*a*) A list of the names and titles of officers in whom is reposed the authority for the issuance of passes and over whose signatures passes will be issued, and (*b*) a list of the names and titles of officers having the authority to request passes of other carriers. (See par. 5.) Any changes in these lists in the course of the year must be reported promptly.

4. The names and titles of persons authorized to countersign passes and requests for passes need not be filed with the Commission.

5. Requests for passes for or on account of officers or employees of traffic associations, fast freight lines, demurrage and car-service bureaus, weighing and inspection bureaus, and other joint agencies maintained by or on behalf of carriers subject to these regulations, for transportation over the lines which are members of such associations may be made direct on such lines in the same manner as provided for requests for passes for or on account of a carrier's own officers or employees. (See par. 27.) Requests for passes over lines other than member lines must be made in one of the three following methods:

(*a*) Requests may be made over the signature of an officer of a member line if such officer's name has been filed with the Commission by such member line in compliance with paragraph 3 (*b*), with the counter signature of an officer or employee of the association.

(*b*) Requests may be made over the signature of an officer of the association if such officer's name has been filed with the Commission by one or more of the member lines in accordance with paragraph 3 (*b*) as having authority to request passes on account of the association.

(*c*) Requests may be made over the signatures of officers of the association if such officers' names have been filed with the Commission in accordance with paragraph 3 (*b*) by the chief officer of the

association, provided such chief officer has been delegated authority to so act by the member lines.

Signatures of issuing officers.

6. Each pass (except a telegraph pass) must bear either the autograph or the facsimile signature of one of the officers named in the list referred to in clause (*a*) in paragraph 3.

7. Each pass bearing facsimile signature must be countersigned with ink, except as provided in paragraph 13, by an officer or responsible subordinate, who must be designated on the pass.

Pass stock.

8. The ordering of all pass stock must be confined to requisitions made by a single designated officer and delivery of the entire stock must be made to him. All vouchers or bills covering the cost of pass stock shall be approved by the officer making requisition therefor before they are carried through the accounts for payment. Unissued pass stock must be filed in such manner as to be accessible and convenient for examination.

Numbering passes.

9. All passes (except telegraph passes issued on telegraph blanks) shall be consecutively numbered before or immediately upon receipt from the printer or stationer. No two passes of the same general class shall bear the same number without an indicative letter prefixed or affixed. Unless all passes are numbered in one series, each general class adopted shall constitute a series of numbers and each subdivision of any general class adopted shall constitute a series of numbers with an indicative letter prefixed or affixed.

10. If a separate stock of passes is provided for each year the numbering must begin with 0 or 1 at the beginning of the year. If the same stock is used for two or more years the numbers may continue consecutively from year to year, commencing with 0 or 1 when desired, but not oftener than once in each calendar year.

11. If adherence to these rules would result in passes carrying numbers consisting of more than five figures, a new series of numbers beginning with 0 or 1 with a letter prefixed may be adopted, provided the letter so prefixed does not occur on any other class of passes.

Record of pass stock received and distributed.

12. A record of pass stock received and distributed must be kept by the officer ordering the pass stock. (See Form 9.) Each of the different forms and series of passes received must be entered on separate sheets or pages and must be recorded and distributed in numerical order. This record must show the form of pass, also the distinctive features of any pass prepared as a subdivision of any of the general classes as provided in paragraph 2(*b*). On the debit side of the record must be entered the entire pass stock received. On the

credit side must be entered all pass stock distributed among other officers or countersigning subordinates, all stock assigned to the officer ordering the stock and issuable by him, and all pass stock destroyed. (For the periods of retention see regulations to govern the destruction of records.)

Preparation of passes.

13. All passes must be filled out with a durable ink, either with pen or typewriter, or by printing, except that in case of emergency a trip pass may be filled out and countersigned by the use of indelible pencil.

14. Each pass issued must bear upon its face the name of the person to be accorded free transportation, who must be of a class named in section 1 of the act to regulate commerce as eligible to receive free transportation.

15. A pass may include, in addition to the person named thereon, a specified number of unnamed persons of any class eligible to receive free transportation, the number and the class to which such persons belong being specified upon the pass; e. g.,

Pass John Smith, car, and five officers and employees.
Account President, officers, and employees X. Y. & Z. Ry.
Pass John Smith and six employees.
Account Section foreman and laborers X. Y. & Z. Ry.
Pass One extra messenger when presented with letter signed by superintendent of Eastern Express Co. authorizing use and giving name of person to be passed.
Account Messenger, Eastern Express Co.

A pass for "John Smith and three children" is not a sufficient compliance with the provisions of this paragraph; it must be made so that the representation that they are the children of the person named shall affirmatively appear; e. g.,

Pass John Smith, one son, and two daughters.
Account Brakeman, X. Y. & Z. Ry.

16. The name of the person presenting the pass must appear upon it unless it be prepared similar to the third example of paragraph 15, and presented with letter authorizing use and giving name of person to be passed. Passes issued for the transportation of more than one person so as to be used by such persons separately must name the person actually using the pass. For instance, a pass to be used by John Smith and his daughter, separately, or a pass to be used by William Brown and one brakeman, separately, should read:

Pass John Smith and Miss Mary Smith.
Pass John Smith and daughter Mary.
Pass William Brown and Edgar Moore.

A pass issued to "John Smith and wife" or to "Mr. and Mrs. John Smith" is construed as if having the name of the wife appearing upon it and may be used by her in the absence of her husband.

17. Each pass must show, in accordance with the following, on what account it is issued:

(*a*) A pass for an officer or employee of the carrier issuing the pass must show the title or occupation of the person to whom it is issued, e. g.,

Pass John Smith.
Account Brakeman.

(*b*) A pass for a member of the family of an officer or employee of the carrier issuing the pass must show the name of such officer or employee, except as provided in paragraph 17 (*c*), his title or occupation, and the relationship of the person to whom it is issued, e. g.,

Pass Miss Mary Smith.
Account Daughter of John Smith, brakeman.

(*c*) A pass for the wife of an officer or employee of the carrier issuing the pass, which shows the husband's Christian name, may omit, after "Account," the name of such officer or employee, e. g.,

Pass Mrs. John Smith.
Account Wife of brakeman.

(*d*) A pass for an officer or employee of a carrier other than the carrier issuing the pass must show the title or occupation of the person to whom the pass is issued and the name of the carrier by which employed, e. g.,

Pass John Smith.
Account Brakeman, A. & B. R. R.

(*e*) A pass for a member of the family of an officer or employee of a carrier other than the carrier issuing the pass must show the name of such officer or employee, except as provided in paragraph 17 (*f*), his title or occupation, the relationship of the person to whom the pass is issued, and the name of the carrier by which employed, e. g.,

Pass Miss Mary Smith.
Account Daughter of John Smith, brakeman, A. & B. R. R.

(*f*) A pass for the wife of an officer or employee of a carrier other than the carrier issuing the pass, which shows the husband's Christian name, may omit, after "Account," the name of such officer or employee, e. g.,

Pass Mrs. George Brown.
Account Wife of clerk, A. & B. R. R.

(*g*) Every pass issued to a person other than an officer or employee of a common carrier or members of their families must state in the space provided for "Account" the reason for the issuance of the pass, e. g.,

Pass Mrs. Sarah Jones.
Account Charity.
Pass Mr. Henry Brown.
Account Traveling secretary, R. R. Y. M. C. A.

18. Every pass issued upon which meals, or sleeping, parlor, or other accommodations are to be furnished free must indicate the character of the accommodations to be furnished thereon, e. g.,

(*a*) When pass does not include passage (see Forms 2 and 5):

To occupy one stateroom.
To meals and berth.

(*b*) When pass includes passage and accommodations (see Forms 3 and 6):

Including parlor room.
Including meals and berth.

19. The territory in which or the points between which a pass will be honored must be shown upon it, e. g.,

From ——— to ———.
Between ——— and ———.
Over entire system.

20. The period of time for which a pass will be accepted for transportation must be indicated upon it, e. g.,

Until ———.
Good for one trip only until ———.
Expires ———.
If used within ——— days.

Requests for passes.

21. Passes shall be issued only upon written requests, or telegraphic requests confirmed by written requests, except as provided in paragraphs 23 and 24, and in accordance with the forms hereinafter prescribed as applicable.

22. All the information required to be shown on passes issued, as prescribed in paragraphs 14 to 20, inclusive, must be indicated on requests for passes. In addition to such information requests must furnish information in accordance with the following:

(*a*) The address of the person for whom the pass is requested.

(*b*) If request be made for a pass for or on account of an officer or employee of a carrier other than the carrier by which such pass may be issued, it must contain a statement that the person for whom the pass is requested is not prohibited by law from receiving free transportation. (Forms 16 and 17.)

(*c*) If request be made for a pass for a person other than an officer or employee, or the member of the family of an officer or employee, of a common carrier the request must give evidence, clearly set forth, or be accompanied by papers, showing the legality of the issuance of the pass requested. No form is prescribed for requests of this character.

23. Written requests for passes may be dispensed with in the following cases, provided the records of passes issued show the full

information required, and in addition state upon whose authority the passes were issued and the reasons for dispensing with written requests:

(*a*) For passes issued to employees engaged in the office in which the passes are actually prepared.

(*b*) For passes sent to employees attached to the office in which the passes are actually prepared but temporarily located at other points to travel upon instructions from such office.

(*c*) In cases of emergency requiring immediate use of pass and when there is insufficient time to procure written requests before issuance.

24. Carriers may, at their option, permit their principal officers to furnish passes to officers and employees, and to the members of families of officers and employees, of other carriers subject to these regulations, who are not prohibited by law from using free transportation, without requiring written requests, provided:

(*a*) That acknowledgments, in accordance with Form 22 hereinafter prescribed, be secured from the persons to whom or on whose account the passes are issued, or from an officer whose name has been filed with the Commission, in compliance with paragraph 3 (*b*), of the carrier on whose account the passes are issued; and provided further,

(*b*) That notices, in accordance with Form 23 hereinafter prescribed, be given the carriers on whose account the passes are issued through the officers of such carriers ordinarily authorized to issue requests on other carriers for passes (see par. 68); and provided further,

(*c*) That the records of the issuing carriers show upon whose authority the passes are issued.

Carriers should be prepared to furnish the Commission, when so required, a full report of passes issued without written requests under the provisions of this section.

25. Notices to other carriers advising of the issuance of passes without written requests must be made in duplicate, or legible impression copies must be taken of them, and the duplicates or impression copies must be retained by the issuing carrier.

26. Requests for passes, also acknowledgments received and copies of notices retained for passes issued without requests, must be filed in the office in which are filed records of annual or term passes or the stubs or carbon copies of trip passes, and in such manner as to be accessible and convenient for examination. The numbers of the passes issued must be noted upon the faces of the requests.

Signatures on requests for passes.

27. Requests for passes for or on account of a carrier's own officers or employees must be made over the signature of the person to whom or on whose account the passes may be issued or by a superior or ranking officer or employee. (See par. 5 regarding joint agencies, etc.)

28. Requests for passes for or on account of officers or employees of a carrier subject to these regulations, other than the carrier issuing the pass, must be over either the autograph or facsimile signature of one of the officers named in the list referred to in clause (*b*) paragraph 3. In case the facsimile signature is used, the request must be countersigned with ink by an officer or responsible subordinate, who must be designated thereon. (See par. 5 regarding joint agencies, etc.)

29. Requests for passes for any persons not covered by paragraphs 27 or 28 must be made over the signatures of the persons making such requests.

Signatures of users of passes.

30. All passes must bear the signatures of the users, preferably in ink. On the back of each pass, other than a telegraph pass issued on a telegraph blank, must appear a statement that the holder is not prohibited by law from receiving free transportation, and that the pass will be lawfully used. This statement may be shown among other conditions, if any, and must be subscribed to by the holder.

31. A pass issued for a number of persons, but naming only one person, such as—

> John Smith, section foreman, and six employees of X. Y. & Z. Ry.
> George Jones and two daughters,

need be signed only by the person whose name appears on the pass.

32. A pass issued for a number of persons, the names of all appearing on the pass, such as—

> William Brown and Edgar Moore, brakemen,

must be signed by the users, whether the pass is used by one or by more than one of the persons named thereon; except that such pass when issued to the members of a family need be signed only by one of the persons using it.

33. A pass issued for a person without giving the name, such as—

> Pass one extra messenger when presented with letter, etc.,

need not be signed by the user. The letter or identification form which accompanies the pass must be indorsed by the user and collected and filed with collected trip passes.

Telegraph passes.

34. Telegraph passes may be issued in cases of emergency only and shall be confined to one-way passage. The issuance of telegraph passes shall be over the name of one of the officers named in the list referred to in clause (*a*) in paragraph 3 or that of one of the countersigning officers referred to in paragraph 7, and only within the territory over which such officers have authority to issue annual, term, or trip passes.

35. Telegraph passes must be issued either on telegraph blanks in accordance with Form 8 or on a special printed form of telegraph pass, showing the same data as required on Form 8 but similar in form to trip passes.

36. Copies of telegraph passes and of the telegrams authorizing issuance of printed forms of telegraph passes must be made by the issuing officer and filed with the stubs or carbon copies of trip passes.

37. If, after a telegraph pass is used, a trip pass is substituted therefor, the former should be filed with requests for trip passes as the authority for issuing the latter.

38. Except as provided in the preceding paragraph, used telegraph passes must be filed with used trip passes.

Tickets in lieu of passes.

39. Detectives and others engaged in similar work and, in cases of emergency, employees and others entitled to free transportation, may be furnished with regular passenger tickets or may be permitted to purchase tickets and have the amounts paid therefor afterwards refunded. In such cases the ticket agent's report of the tickets "without value," or the vouchers refunding the amounts paid for the tickets, must be supported by the authority of one of the officers named in the list referred to in clause (*a*) in paragraph 3. Applications for refunds of fares paid or the authorities for such refunds must show the same information as is required to be shown on the requests for passes referred to in paragraph 22. When detectives and others engaged in similar work are known by number only and it is desired that their names shall not appear in the records, the numbers may be substituted for the names on the authorities referred to above. Carriers must be prepared to furnish adequate evidence that the persons so designated were actually engaged in the service shown on the authorities.

40. The use of a special form of free ticket according to the holder certain privileges or accommodations, such as meals, staterooms, berths, or the use of limited trains, is prohibited. If such form is desired it must be issued either in regular pass form or as a subdivision of one of the general classes as provided for in paragraph 2 (*b*).

Record of free tickets issued.

41. A complete record of all tickets issued in lieu of passes, including tickets for which the fares have been refunded as well as those issued free, must be maintained by carriers and filed in the office of the officer authorizing such issuance or refund. This record must show the date; form and number of ticket; stations from and to; name and address or other designation of person to whom issued; account of issuance (in accordance with par. 17); amount of fare; and name of officer authorizing the issuance of free ticket or refund of fare paid. (See Form 13.)

Free transportation without passes.

42. At the option of carriers, the following designated persons may be given passage, meals and sleeping, parlor, or other accommodations without passes, when in the actual performance of their duties:

Crews of trains, cars, and vessels.
Sleeping car, parlor car, and dining car employees.
Express messengers.
Baggage agents.
Newsboys on trains.

43. In cases of wrecks, epidemics, or other calamitous visitations, persons not prohibited by law from receiving free transportation may be accorded such transportation without passes. In such cases a general statement of the facts must be made by conductors or pursers and filed with reports of passes honored.

44. Passes need not be issued to a carrier's own employees for necessary travel in the performance of their duties in the transportation, maintenance, or construction work of the carrier requiring the movement of employees between points on its line of road, or for travel to and from such duties; provided that in lieu of passes such employees be supplied with checks, uniforms, badges, or other evidence which will establish their identity as bona fide employees entitled to receive passes; and provided further that instructions to recognize the particular means of identification which the carrier adopts be issued to conductors and ticket collectors and included in the carrier's general rules and instructions governing the issuance and use of passes referred to in paragraph 85.

45. Carriers are not required to issue passes for the free transportation wholly within any one municipality of their employees and others not prohibited by law from receiving free transportation; provided that persons so transported are distinguishable by badges, cap emblems, or uniforms indicative of their service.

United States Post Office Department commissions.

46. Commissions issued by the United States Post Office Department may be accepted for the passage of officers and employees of that department when traveling on official business. (See par. 74.)

Transportation of caretakers.

47. Pass forms must not be used for the transportation of caretakers of property. The transportation of caretakers is regarded as revenue transportation, the cost of which is included in the rates covering the charges on shipments for which caretakers are allowed.

48. Caretakers in actual charge of shipments of live stock, poultry, milk, or fruit, and traveling on trains or vessels with such shipments, shall be furnished with no other evidences of their rights to transportation than are contained in shipping contracts, or in identification papers to be used in connection with notations on waybills. If caretakers are permitted under the provisions of tariffs to travel on passenger trains immediately preceding or following shipments, they must be furnished with a form of caretaker's ticket, which must give full waybilling reference and conform to published tariff provisions.

49. If a caretaker's return passage is furnished under the terms of the shipping contract, it shall be provided for either by having the shipping contract executed at destination for return, or by having it lifted and a caretaker's return ticket issued, which must conform to published tariff provisions and show (*a*) the waybill or the shipping contract reference or (*b*) the initials and numbers of the cars, or the name of vessel, the shipping point, and the destination named in the contract.

50. In case shipments of milk are handled on tickets instead of waybills, caretakers' tickets must give full references to dates and numbers of the trains, or names of vessels, on which the shipments move.

51. All collected caretakers' tickets, shipping contracts, and identification papers on which caretakers are carried must be checked against the waybills or waybill records and filed in such manner as to be accessible and convenient for examination.

Extension of time limit of passes.

52. The time limit of a pass may be extended by an indorsement thereon, provided that appropriate record is maintained showing the final limit of passes so indorsed.

53. The time limit of outstanding annual or term passes may be extended, without indorsement, by the issuance of a general notice to that effect. If this is done, a copy of the notice shall be filed with the Commission and a copy shall be filed in the office in which are kept the records of the issuance of passes so extended and shall become a part of the records of passes issued.

Records of passes issued.

54. A complete record of each pass issued must be kept by carriers subject to these regulations. This record must supply information as indicated by the headings on the forms hereinafter prescribed

appropriate for the class of pass to be recorded, and such information must correspond with that appearing on the pass and request. In space provided for "Accommodations, etc.," on the record of annual and term passes issued must be shown all accommodations and services included on pass other than passage, such as drawing room, stateroom, berth, or meals. If passes, prepared for passage only, are indorsed as permitted in paragraph 2 (*c*) to include accommodations in addition to passage, similar indorsement must be made in the record of passes issued; if made on annual or term passes, it must appear in space for "Accommodations, etc.," on Form 10 or 11; if on trip passes, it must also appear on the stub or carbon copy of pass so indorsed.

55. Annual and term passes issued must be recorded on sheets or cards prepared similar to Forms 10 or 11.

56. If Form 10 is adopted, the passes must be entered either in numerical order or in alphabetical order according to the surnames of the persons to whom the passes are issued. When passes are entered in numerical order, an alphabetical index by names shall be maintained; when entered in alphabetical order, a numerical index showing name shall be maintained.

57. If Form 11 is adopted, the cards must be filed either in numerical order or in alphabetical order according to the surnames of the persons to whom the passes are issued. When cards are filed in numerical order, an alphabetical index by names shall be maintained; when filed in alphabetical order, a numerical index showing name shall be maintained. In lieu of the index required in this paragraph, if desired, records on this form may be made in duplicate with one set of cards filed in numerical order and the other set filed in alphabetical order according to the surnames of the persons to whom the passes are issued.

58. The numerical records or indexes referred to in paragraphs 56 and 57 must be kept separately by forms and series of passes; the alphabetical records or indexes may be kept either by forms and series of passes or in one complete alphabetical list for the entire issue.

59. Carriers may, if it is desired, keep an additional record of passes issued entered by departments, carriers, or otherwise, on Forms 10 or 11, but such additional record shall not substitute the complete alphabetical or numerical record or index required in paragraphs 56 and 57.

60. When the numbers of passes issued are shown in strict numerical order on requests received for annual and term passes, such requests may constitute the numerical index required in paragraphs 56 and 57, provided that any numerical index so maintained shall

be complete and shall contain not more than one series of numbers nor more than one form of pass.

61. The record of trip passes issued shall be kept on the stubs or carbon copies of trip passes. Full information must be shown on the stub or carbon copy of each trip pass, as provided on Forms 4, 5, and 6, and this information must conform to the data on the pass and coupon.

62. The record of commuter passes shall be kept on Form 10 or Form 11, if issued in card or book form, or on the stubs, if issued in coupon form with stub. These records must be maintained in the same manner as is provided for annual, term, or trip passes.

63. The record of telegraph passes issued on telegraph blanks shall be kept on Form 12. Such passes may be entered (*a*) in chronological order, (*b*) in alphabetical order according to surnames of persons to whom passes were issued, or (*c*) under departments, carriers, etc.

64. The record of telegraph passes issued on printed forms similar to trip passes shall be kept either on Form 12 or upon the stubs, if issued with stubs. In either event the full information required on Form 12 shall be shown.

65. If a pass is canceled, returned, or lost, the fact must be stated on the record, with the date of cancellation, return, or loss entered.

66. The records of passes issued must be filed in such manner as to be accessible and convenient for examination.

Records of requests on other carriers for passes.

67. Requests on other carriers for passes must be made in duplicate, or legible impression copies must be taken of them, and the duplicates or impression copies must be retained by the requesting carrier and filed in such manner as to be accessible and convenient for examination. When a pass is received, its number must be noted on the duplicate or impression copy of the request.

68. Notices received from other carriers advising of the issuance of passes under the provisions of paragraph 24 shall be filed in the office in which are filed copies of requests on other carriers for passes.

Joint passes.

69. A pass issued jointly by two or more carriers must show, in space provided for "Name of carrier," the names of each of the carriers concerned in such pass, and must also bear the autograph or facsimile signature of an officer named in the list referred to in clause (*a*) in paragraph 3, of each of the carriers interested. If all the signatures of such officers are facsimile signatures, the pass must be countersigned with ink by an officer or responsible subordinate of one of the carriers interested, who must be designated on the face of the pass.

70. If arrangements are made to accept or honor passes issued by other carriers over certain portions of a carrier's lines, such arrangements must be embodied in the pass rules and regulations referred to in paragraph 85, or a statement of the arrangements must be filed with the Commission.

Filing passes.

71. All passes collected and passes spoiled or returned must be filed in such manner as to be readily accessible and convenient for examination.

Reports of passes honored.

72. Reports, showing the use of passes, shall be made in accordance with the provisions of paragraphs 75 to 84, inclusive.

73. Travel performed on transportation certificates or similar authorities issued in accordance with the laws of a State which require designated officers to be accorded free transportation while on journeys entirely within the limits of such State, must be reported in the same manner as travel performed on annual or term passes.

74. Travel performed on commissions issued by the United States Post Office Department must be shown on conductor's or purser's report of passes honored, except when the holder is actually engaged in handling mail on the train or vessel.

Reports of passes honored—Carriers by rail.

75. Conductors or ticket collectors of carriers by rail must make reports of annual and term passes honored for each run on blank similar to Form 18 hereinafter prescribed, or on identification slips, as provided in paragraph 77. If desired, such reports may be combined with reports of revenue passengers, provided the required information is shown. It is optional with carriers by rail whether or not this report shall cover (*a*) passes issued to the employees of the reporting carrier and members of their families, (*b*) passes honored in suburban territory, and (*c*) passes honored for transportation wholly within any one city, town, or municipality. By the term "employees," as here used, is meant the officers and employees devoting substantially all their time to the work or business of the carrier and regularly carried on its pay rolls. By "suburban territory," as here used, is meant the territory adjacent to large centers to and from which there is a regular commuter travel.

76. Trip passes collected on rail lines, except as covered in clause (*a*), (*b*), or (*c*) of paragraph 75, shall in all cases be indorsed or punched so as to indicate the dates and numbers of trains on which used, and in addition thereto:

(*a*) If a trip pass, except as covered in clause (*a*), (*b*), or (*c*) of paragraph 75, is honored for passage between stations other than those named on its face and is collected, the conductor or ticket collector

shall indicate upon it by punch or indorsement the stations between which it actually is used.

(*b*) If a trip pass, except as covered in clause (*a*), (*b*), or (*c*) of paragraph 75, is honored for passage between stations other than those named on its face and is not collected, the conductor or ticket collector shall report the use of the pass on conductor's report, Form 18, or on identification slip, and in the same manner as provided for annual and term passes.

77. The use of identification slips and the form of such slips, if used, are left to the option of carriers by rail. If identification slips are used, and if they show the same information as required by conductor's report, Form 18, they may be substituted in lieu of the conductor's report.

78. Station numbers or letters instead of names may be used on conductors' reports and for indorsements on trip passes provided an official list of the symbols used is kept available for examination.

Reports of passes honored—Carriers by water.

79. Pursers or stewards of carriers by water must make reports of all passes honored and not collected for each trip on blank similar either to Form 20 or 21 hereinafter prescribed. If desired, Form 20 may be combined with the landing or identification check (as used in the collection of transportation at the time passengers disembark) and Form 21 may be combined with the reports of revenue passengers, provided the information required on Forms 20 and 21 is shown. It is optional with carriers by water whether or not these reports shall cover trip passes honored and collected.

80. A trip pass honored and collected, when not included in purser's report of passes honored, must be indorsed or punched by the ticket collector so as to indicate the date and name of vessel on which used, and the points between which used if other than those named on pass, and further, in the event that the pass includes sleeping or other accommodations, the stateroom or other accommodations furnished on the pass shall also be indicated by number or letter.

81. Where locked boxes are used in which ticket collectors deposit all collections as passengers disembark, reports of or indorsements on trip passes, as to date and name of vessel on which used, shall be made by either the ticket collector or by the employee whose duty it is to open and report the contents of such boxes.

82. It is optional with carriers by water whether or not reports shall be made covering passes honored over ferry lines when operated between points of close proximity.

Reports of passes honored—Sleeping and parlor car accommodations.

83. Conductors or ticket collectors of sleeping and parlor cars must make reports for each run of passes on which accommodations have been furnished, on blanks similar to Form 19 hereinafter prescribed or on reports prepared in columnar form, similar to Form 18, with headings to provide for the information required. If desired, Form 19 may be combined with reports of revenue passengers, provided the information required on Form 19 is shown. It is optional with carriers whether or not these reports shall cover trip passes honored and collected.

84. Trip passes collected and not included in conductors' reports of passes honored, must be indorsed or punched by the conductors or ticket collectors so as to indicate the dates on which used, the points between which used if other than those named on pass, the accommodations furnished thereon, the names or numbers of cars, and the route.

Carriers' pass rules.

85. Carriers must file with the Commission on or before January 1, 1917, copies of all their general rules and instructions then in effect governing the issuance and use of passes, if such have not been filed, and forward promptly copies of any subsequent rules and instructions. It is not intended, however, that carriers shall cause to be printed such rules or instructions for the specific purpose of filing them with the Commission.

Pass and record forms.

86. Passes must be issued and records kept substantially in accordance with the forms hereinafter prescribed. Except as provided for elsewhere in these regulations the forms indicate the nature of the information required and the order in which it shall appear. If, however, there is insufficient space on the face of any pass to show all the information required, reference may be made to the back of pass, where it shall be shown.

87. The dimensions of the forms contained in these regulations are not prescribed; however, in order to facilitate the filing of records it is recommended that Forms 16, 17, and 23 be prepared on paper 8 by 10½ inches.

88. Carriers may include any additional matter in the pass forms or record forms, but such additional matter must not be permitted to impair the information required in the prescribed forms or to affect the order in which it is given. The matter printed in italic type in the prescribed forms is not intended to be a part of the form but merely to indicate the nature of the information required.

89. Carriers may adopt additional record forms, but must file with the Commission a list of such forms, showing their use and their purpose, as provided in the Order on page 6.

90. For a special or unusual occasion—such as a convention of an association of railway employees, to attend which its members would use the lines of two or more carriers—when compliance with the foregoing regulations would be needlessly burdensome to the carriers concerned, consideration will be given by the Commission to an application from the initial carrier, made after an agreement with the other carrier or carriers over whose lines it is proposed to issue free transportation, for authority to issue a special form of pass, bearing coupons for the several carriers over whose lines the pass is to be effective.

Form 1.

ANNUAL OR TERM PASS.

FOR PASSAGE ONLY.

1917. (*Name of carrier.*) No. .....

Pass[1].....

Account[2].....

.....

Between[3].....

Until[4]......, 19.... {Unless otherwise ordered and subject to conditions on back.

Valid when countersigned by.....

.....
(*Name and official title.*)

Countersigned by

.....

Form 2.

ANNUAL OR TERM PASS.

FOR ACCOMMODATIONS, MEALS, ETC., BUT NOT INCLUDING PASSAGE.

1917. (*Name of carrier.*) No. .....

This pass entitles[1].....

Account[2].....

.....

To occupy[5].....

Between[3].....

Until[4].....:....., 19.... {Unless otherwise ordered and subject to conditions on back.

Valid when countersigned by.....

.....
(*Name and official title.*)

Countersigned by

.....

See notes relating to Forms 1 and 2 on page 26.

[1] See paragraphs 14, 15, and 16.
[2] See paragraph 17.
[3] See paragraph 19.
[4] See paragraph 20.
[5] See paragraph 18.

Form 3.

ANNUAL OR TERM PASS.

FOR PASSAGE, INCLUDING MEALS, BERTHS, OR OTHER ACCOMMODATIONS.

1917 (*Name of carrier.*) No. .....

Pass [1].....

Account [2].....

.....

Between [3].....

Including [5].....

Until [4]......, 19....{Unless otherwise ordered and subject to conditions on back.

Valid when countersigned by.....

.....
(*Name and official title.*)

Countersigned by

.....

[1] See paragraphs 14, 15, and 16.
[2] See paragraph 17.
[3] See paragraph 19.
[4] See paragraph 20.
[5] See paragraph 18.

NOTES RELATING TO FORMS 1, 2, AND 3:

For annual or term passes to be issued for travel over the entire line or certain portions thereof, the word "between" may be omitted, and in the space provided may be printed "Over entire system," "Over all lines," "Over Eastern Division," etc.

If annual or term passes are to be issued over the autograph signature of an officer, the provision for countersignature may be omitted from such passes.

NOTE RELATING TO FORM 2:

Passes to include meals or accommodations, other than passage, in addition to sleeping or parlor accommodations may be printed "To" instead of "To occupy," so that a pass as issued may read, "To meals and stateroom."

NOTE RELATING TO FORM 3:

Passes may be printed to read "Including meals and berth" or to indicate such other accommodations as are to be included with passage.

Form 4.

TRIP PASS.

FOR PASSAGE ONLY.

(*Name of carrier.*)	(*Name of carrier.*)	(*Name of carrier.*)
No.	No.	No. .....
TRIP PASS STUB.	TRIP PASS.	TRIP PASS.
....., 19..	Pass[1].....	(Subject to conditions on back.)
Pass[1].....	Account[2].....	....., 19..
Account[2].....	.....	Pass[1].....
.....	From[3].....	Account[2].....
From[3].....	To[3].....	.....
To[3].....	Void if detached.	From[3]..... to[3].....
And return.	Issued by.....	Good for one trip only until[4]...
Address.....		....., 19..
Expires[4].....		Valid when countersigned by
Requested by.....		.....
Issued by.....		..... (*Facsimile signature.*)
		..... (*Official title.*)
		Countersigned by
		.....

See notes relating to this form on page 29.

[1] See paragraphs 14, 15, and 16.
[2] See paragraph 17.
[3] See paragraph 19.
[4] See paragraph 20.

Form 6.

TRIP PASS.

FOR ACCOMMODATIONS, MEALS, ETC., BUT NOT INCLUDING PASSAGE.

(*Name of carrier.*)	(*Name of carrier.*)	(*Name of carrier.*)
No.	No.	No. .....
TRIP PASS STUB.	TRIP PASS.	TRIP PASS.
....., 19..	This pass entitles[1]	(Subject to conditions on back.)
Pass entitling[1]	Account[2]	....., 19..
Account[2]	.....	This pass entitles[1] .....
.....	To occupy[5]	Account[2] .....
To occupy[5]	From[3]	.....
From[3]	To[3]	To occupy[5] .....
To[3]	Void if detached.	From[3] ..... to[3] .....
And return.	Issued by	Expires[4] ....., 19..
Address		Valid when countersigned by
Expires[4]		.....
Requested by		.....
		(*Facsimile signature.*)
Issued by		.....
		(*Official title.*)
		Countersigned by
		.....

See notes relating to this form on page 29.

[1] See paragraphs 14, 15, and 16.
[2] See paragraph 17.
[3] See paragraph 19.
[4] See paragraph 20.
[5] See paragraph 18.

Form 6.

TRIP PASS.

FOR PASSAGE, INCLUDING MEALS, BERTHS, OR OTHER ACCOMMODATIONS.

(*Name of carrier.*)	(*Name of carrier.*)	(*Name of carrier.*)
No.	No.	No. .....
TRIP PASS STUB.	TRIP PASS.	TRIP PASS.
....., 19..	Pass [1].....	(Subject to conditions on back.)
Pass [1].....	Account [2].....	....., 19..
Account [2].....	.....	Pass [1].....
.....	From [3].....	Account [2].....
From [3].....	To [3].....	.....
To [3].....	Including [5].....	From [3].....to [3].....
And return.	Void if detached.	Including [5].....
Including [5].....	Issued by.....	Good for one trip only until [4]
Address.....		....., 19..
Expires [4].....		Valid when countersigned by
Requested by.....		.....
Issued by.....		..... (*Facsimile signature.*)
		..... (*Official title.*)
		Countersigned by
		.....

[1] See paragraphs 14, 15, and 16.
[2] See paragraph 17.
[3] See paragraph 19.
[4] See paragraph 20.
[5] See paragraph 18.

NOTES RELATING TO FORMS 4, 5, AND 6:

Trip passes may be provided with a second sheet for carbon copies in lieu of the pass stub. In such cases the carbon copies must be numbered to correspond with the passes, and must show the full information required on the stub.

The trip pass may so be prepared as to permit, by using carbon paper, the filling in of all information required on the stub, the going portion, and the return portion of the pass, by one writing. One coupon of such passes may read "To ..... from .....," instead of "From ..... to .....," as shown on forms 4, 5, and 6.

Trip passes may, if preferred, be limited by a system of dates along the margin, the limits to be indicated by punching or by tearing off dates later than that on which the pass expires.

NOTE RELATING TO FORM 5:

Passes to include meals or accommodations, other than passage, in addition to sleeping or parlor accommodations may be printed "To" instead of "To occupy," so that the pass as issued may read "To meals and stateroom."

NOTE RELATING TO FORM 6:

Passes may be printed to read "Including meals and berth" or to indicate such other accommodations as are to be included with passage.

Form 7.

COMMUTER PASS.

(*Name of carrier.*) No. .....

[1] ..... TRIP PASS.

Pass [2] .....

Account [3] .....

.....

Between [4] .....

Until [5] ....., 19... {Unless otherwise ordered and subject to conditions on back.

Valid when countersigned by .....

.....
(*Name and official title.*)

Countersigned by

.....

[1] See paragraph 2 (*a*) Commuter passes.
[2] See paragraphs 14, 15, and 16.
[3] See paragraph 17.
[4] See paragraph 19.
[5] See paragraph 20.

NOTES RELATING TO FORM 7:

Commuter passes may be issued either in coupon form, with a separate coupon for each ride, or in card form with numbers on the margin, one of which is to be punched for each ride. The card pass, or the last coupon or cover of book (if issued in coupon form), must contain the information indicated on this form.

Electric railways may provide coupons on this form, each of which represents an equivalent in free transportation of a specified amount of fare.

Form 8.

TELEGRAPH PASS.

(See paragraphs 34 to 38, inclusive.)

.....

.....

This telegram, when written in ink and countersigned by you, will pass [1].....

.....from [2]..... to [2].....

account [3].....if used within [4].....days.

.....

(Name of issuing officer.)

[1] See paragraphs 14, 15, and 16.
[2] See paragraph 19.
[3] See paragraph 17.
[4] See paragraph 20.

Form 9.

RECORD OF PASS STOCK RECEIVED AND DISTRIBUTED.

(See paragraph 12.)

DEBIT. Form..... CREDIT.

Stock received.				Stock distributed.					
Date.	Consecutive numbers.		Number.	Date.	Furnished to—		Consecutive numbers.		Number.
	Commencing.	Closing.			Name.	Title.	Commencing.	Closing.	

Form 10.

RECORD OF ANNUAL AND TERM PASSES ISSUED—BOOK RECORD.

(See paragraphs 54 to 66, inclusive.)

Form.....									
Date issued.	No.	To whom issued.			Accommodations, etc.	Territory.	Date of expiration.	Request of—	Remarks.
		Name.	Address.	Account.					

NOTE RELATING TO FORM 10:

Carriers issuing passes for passage only are not required to provide the space for "Accommodations, etc.," on Form 10.

Form 11.

RECORD OF ANNUAL AND TERM PASSES ISSUED—CARD RECORD.

(See paragraphs 54 to 66, inclusive.)

..... Form..... No.....

Name.....

Address.....

Account.....

Accommodations, etc.....

Territory.....

Date of expiration.....

Request of.....

Date issued.....

Remarks.....

NOTES RELATING TO FORM 11:

Carriers issuing passes for passage only are not required to provide the space for "Accommodations, etc.," on Form 11.

In order to facilitate the preparation of such passes and records as are prepared on paper thin enough to secure two legible carbon copies, the records and indexes of passes issued may be made in that manner. In such cases and by preparing record forms sufficiently longer than the pass forms, the information not required on the pass form may be shown at the right of the information which is required, viz: "Address" on the line with "Name"; "Request of" on the line with "Account"; "Date issued" on the line with "Territory"; and "Remarks" on the line with "Date of expiration."

Form 12.

RECORD OF TELEGRAPH PASSES ISSUED.

(See paragraphs 54 to 66, inclusive.)

Date issued.	To whom issued.			From—	To—	Issued by—	Remarks.
	Name.	Address.	Account.				

Form 13.

RECORD OF FREE TICKETS ISSUED.

(See paragraph 41.)

Ticket.			Station from—	Station to—	To whom issued.	Address.	Account.	Amount of fare.	Authorized by—	Remarks, file no., etc.
Date.	Form.	No.								

Form 14.

REQUEST FROM CARRIER'S OFFICERS AND EMPLOYEES FOR PASSES.

PASSAGE ONLY.

(See paragraphs 21 and 22.)

.....Company,

OFFICE OF.....,

....., 191..

.....

.....

.....

DEAR SIR: Please furnish pass for.....

.....

Address.....

Account of.....

From.....

To....., and return.

Limited to.....

([1]).....
(Signature.)

.....
(Title or occupation.)

Approved.

.....

Pass No.[2]..... issued.

[1] See paragraph 27. [2] See paragraph 26.

NOTE RELATING TO FORM 14:
This form may be extended so as to cover two or more passes.

Form 15.

REQUEST FROM CARRIER'S OFFICERS AND EMPLOYEES FOR PASSES.

PASSAGE AND ACCOMMODATIONS, OR ACCOMMODATIONS ONLY.

(See paragraphs 21 and 22.)

.....Company,

OFFICE OF .....,

....., 191..

.....

.....

.....

DEAR SIR: Please furnish pass for.....

.....

Address.....

Account of.....

To occupy.....

From.....

To.....and return.

Including.....

Limited to.....

([1]).....
(Signature.)

.....
(Title or occupation.)

Approved.

.....

Pass No.[2].....issued.

[1] See paragraph 27. [2] See paragraph 26.

NOTES RELATING TO FORM 15:

This form may be extended so as to cover two or more passes.

Requests for passes for passage and accommodations need not be provided with the space "To occupy" on Form 15. (See par. 18b.)

Requests for passes for accommodations only need not be provided with the space "Including" on Form 15. (See par. 18a.)

Form 16.

REQUEST ON ANOTHER CARRIER FOR TRIP PASSES.

(See paragraphs 21, 22, 67, and 87.)

.....Company,

OFFICE OF.....,

....., 191..

.....

.....

.....

DEAR SIR: Will you kindly favor me, on account of this company, with trip pass..for the following person.., who.....not prohibited by law from receiving free transportation: [1].....

.....

Name.....

Address.....

Account of.....

From.....to.....and return.

Limited to.....

This request shall be valid only when countersigned by myself or by.....

My name is on file with the Interstate Commerce Commission.

([2]) .....
(Facsimile signature of officer.)

.....
(Title.)

Countersigned by:

.....

Pass No.[3].....issued.

[1] On requests drawn on other carriers for accommodations, but not including passage, in this space must be shown the character of accommodations requested; as, "to occupy one berth." On requests for passes to include both passage and accommodations, in this space must be shown the character of accommodations and a statement that passage also is desired; as, "to occupy one stateroom in addition to passage."

[2] See paragraph 28.

[3] See paragraphs 26 and 67.

NOTES RELATING TO FORM 16:

The provision for countersignature on Form 16 is not required when such forms are to bear autograph signature.

This form may be extended so as to cover two or more passes.

Form 17.

REQUEST ON ANOTHER CARRIER FOR ANNUAL OR TERM PASSES.

(See paragraphs 21, 22, 67, and 87.)

.....Company,

OFFICE OF.....,

....., 191..

.....

.....

.....

DEAR SIR: Will you kindly favor me, on account of this company, with.....
(*Annual or term.*)

pass....for.....over your line for the following person.., who.....
(*Period or year.*)
not prohibited by law from receiving free transportation: [1].....

.....

Number of pass issued.[2]	Name.	Title or occupation.	Address.	Territory.	Remarks, etc.[3]

This request shall be valid only when countersigned by myself or by.....

My name is on file with the Interstate Commerce Commission.

([4]) .....
(*Facsimile signature of officer.*)

.....
(*Title.*)

Countersigned by:

.....

[1] On requests drawn on other carriers for accommodations, but not including passage, reference must be made in this space to the character of accommodations requested; as, "to occupy space as indicated below." On requests for passes to include both passage and accommodations in this space reference must be made to the character of the accommodations requested and a statement that passage also is desired; as, "to occupy space as indicated below in addition to passage."

[2] See paragraphs 26 and 67.

[3] In column headed "Remarks, etc.," shall be shown the character of any accommodations requested other than passage.

[4] See paragraph 28.

NOTE RELATING TO FORM 17:

The provision for countersignature on Form 17 is not required when such forms are to bear autograph signature.

Form 18.

CONDUCTOR'S REPORT OF PASSES HONORED.

STEAM ROADS AND ELECTRIC RAILWAYS.

(See paragraphs 75 to 78, inclusive.)

(*Name of carrier.*)

Train No..... Date.....

Train run, from.....to.....

.....
(*Conductor or other employee.*)

Punch. ☐

Form or kind of pass.	Pass No.	In favor of—	Honored on this train.		No. persons.	Remarks: Stop-offs, etc.
			From—	To—		

Form 19.

CONDUCTOR'S REPORT OF PASSES HONORED.

SLEEPING AND PARLOR CAR ACCOMMODATIONS.

(See paragraphs 83 and 84.)

(*Name of carrier.*)

Form or kind of pass..... No.....

Car..... Line.....

Accommodations [1].....

From.....

To.....

Date.....

In favor of.....

.....
(*Conductor or other employee.*)

[1] The drawing-room, section, berth, etc., furnished on pass shall be indicated by number or letter.

Form 20.

PURSER'S REPORT OF PASSES HONORED.

CARRIERS BY WATER.

(See paragraphs 79 to 82, inclusive.)

(*Name of carrier.*)

Date [1] .....

Name of vessel [1] .....

Sailing, from [2] ..... to [2] .....

Pass honored on this trip } from ..... to .....

Form or kind of pass .....

Pass number .....

In favor of .....

Number of persons .....

Accommodations, etc. [3] .....

Remarks .....

.....
(*Purser or other employee.*)

[1] Date and name of vessel may be shown on back if dating stamp is used showing such information.

[2] Termini of run may be printed or stamped and the form prepared so as to read, "Between ..... and ....." providing direction of trip is shown, as northbound, eastbound, etc.

[3] Any accommodations included on pass, other than passage, must here be shown. The berths, staterooms, etc., furnished shall be indicated by number or letter.

Form 21.

PURSER'S REPORT OF PASSES HONORED.

CARRIERS BY WATER.

(See paragraphs 79 to 82, inclusive.)

(*Name of carrier.*)

Date.....

Name of vessel.....

Sailing from.....to.....

.....

(*Purser or other employee.*)

Accommodations, etc.	In favor of—	Form or kind of pass.	Pass No.	Honored on this trip.		Number of persons.	Remarks.
				From—	To—		
(1)							
(2)							

[1] The stateroom or berth number may be printed on the form and the required information entered opposite such number.

[2] Any accommodations included on pass, other than passage, must here be shown. The staterooms, berths, etc., furnished shall be indicated by number or letter.

Form 22.

ACKNOWLEDGMENT OF PASSES ISSUED WITHOUT WRITTEN REQUEST.

(See paragraph 24.)

Date.....

.....

.....

.....

Receipt is hereby acknowledged of

....
(*Name of carrier.*) (*Annual or term.*)

Pass No....., in favor of the following person.., who.....not prohibited by law from receiving free transportation:

Name.....

Address.....

Account of.....

Territory.....

Limited to.....

.....

NOTES RELATING TO FORM 22:

This form may be extended so as to cover two or more passes.

Forms 22 and 23 may be prepared so that the two forms and the necessary carbons may be made at one writing.

Form 23.

NOTIFICATION OF PASSES ISSUED WITHOUT WRITTEN REQUEST.

(See paragraphs 24, 25, and 87.)

Date.....

.....

.....

.....

Notice is hereby given of the issuance of

....
(*Name of carrier.*) (*Annual or term.*)

Pass No. ....., in favor of the following person ..., who ..... furnished such transportation without written request from your company:

Name.....

Address.....

Account of.....

Territory.....

Limited to.....

.....
(*Name of officer issuing pass.*)

NOTES RELATING TO FORM 23.

This form may be extended so as to cover two or more passes.

Forms 22 and 23 may be prepared so that the two forms and the necessary carbons may be made at one writing.

[fol. 16] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO REQUIRE THE PRODUCTION OF DOCUMENTS IN POSSESSION OF THE DEFENDANT INTERSTATE COMMERCE COMMISSION—Filed May 17, 1930

Come now the petitioners herein, and pray the Court to make an order requiring the defendant, Interstate Commerce Commission, hereinafter called the "Commission," to produce for the purpose of being introduced in evidence in behalf of the petitioners at the trial of this cause, a document or mass of papers now in its possession, herein referred to as the "record," and hereinafter more fully described, the introduction of which in evidence is material to the cause of action of the petitioners; or, in the alternative, to make an order authorizing and directing the issue of a subpoena duces tecum, directed to the Clerk of the Commission requiring the production of said record at the said trial:

As grounds for the granting of this motion the petitioners respectfully show to the Court:

[fol. 17] I

The said record consists of written answers from three hundred eighty seven carriers of the country to a questionaire sent out to them by the Commission in the manner and for the purpose as follows:

On April 5, 1926, the Commission for the purpose of forming its judgment as to the legality of the free movement of private or office cars over foreign lines of railroad, of its own motion filed its petition or order addressed to all Class I and Class 2 carriers, and to switching and terminal carriers, calling for information for the calender years 1923, 1924 and 1925 as to private passenger train cars owned, leased or operated, the movement or use of such cars as were transported free or at less that tariff rates on home and foreign lines, and the occupants of such cars on respective trips.

The information so sought by the Commission was obtained through answers made by said carriers to a question-aire addressed to all such carriers. A copy of said petition or order is hereto attached, and marked "Exhibit A," and made a part hereof, and a copy of said question--aire is hereto attached, marked "Exhibit B" and made a part hereof. The returns of said carriers to said question--aire, which constitute and make up the record above referred to, were exceedingly voluminous. In bulk they are sufficient to fill a fair size motor truck. By paragraph 13 of Section 16 of the Interstate Commerce Act the said original record is made admissible in evidence, in all judicial proceedings, as prima facie proof of what it purports to be; and certified copies of or extracts from said record are made admissible in evidence with like effect as the [fol. 18] original. A certified copy of said record at prices fixed by law for copies of records, certified by the Commission, will cost in excess of $4,300.00.

II

The Commission upon consideration of said record, on June 21st, 1929, handed down its report (155 I. C. C. 775), containing a summary of the facts contained in the record, and holding that the transportation or movement of private passenger cars, including so-called office cars by one carrier for another or its officials, free or at other than published tariff rates, is contrary to the provisions of the Interstate Commerce Act; and that such practice is unjustly discriminatory and unduly preferential and prejudicial. And on November 4, 1929, the Commission issued its formal order requiring all carriers on or before a specified date to cease and desist from the transportation or movement of private passenger train cars, including so-called office cars of another carrier, free or at other than published tariff rates thereafter to be established.

There is no specific finding that the movement or transportation of legitimate office cars, as hereinafter defined, is illegal, or discriminatory or prejudicial, but the broad language of the Commission's order to cease and desist includes such office cars as well as all other private passenger cars.

III

On February 7, 1930, the petitioners brought the suit herein to enjoin and set aside said order insofar only as it purports to prohibit the free transportation or movement over foreign lines of legitimate office cars occupied by the officers and employees of the owning company and traveling in the interest of or in connection with the opera- [fol. 19] tion of the railroad of said company. After alleging in their petition that for the reasons therein stated the free movement of such office cars over foreign lines is conducted by the transporting company in its capacity of private carrier, as distinguished from its functions and duties of a common carrier, and that such free movement is otherwise permitted by law, the petitioners allege that if the Commission, by including all private passenger cars in its findings, may be said to have found that the practice of moving office cars, as therein and herein described, to be illegal or discriminatory or prejudicial, such finding was unsupported by any substantial evidence before the Commission.

Both the United States and the Commission in their answers herein have denied that such finding is unsupported by substantial evidence; they decline to produce the original record at the trial, but insist that a certified copy thereof must be obtained by petitioners at great expense, and be introduced in evidence by them to prove to the Court, by an examination thereof, that no substantial evidence exists in the record to support such finding; and they contend that, in the absence of the record, or a certified copy thereof, the Court will be compelled to indulge in the conclusive presumption that all the Commission's findings, including the one in question, were fully supported by evidence.

IV

Petitioners allege that the Commission's finding of illegality, prejudice and discrimination, made with respect to the movement of all private passenger cars, was based largely upon the use of such cars by members of the traveling public, and is wholly inapplicable to the movement or transportation of office cars, as herein defined; and they

[fol. 20] deny that any finding was made by the Commission that the movement or transportation of such office cars was or could be prejudicial or discriminatory, and deny that there was any evidence in the record to that effect. They show to the Court that the form of the question-aire, "Exhibit B", was designed to secure information relative to all private passenger cars generally with the purpose of prohibiting any illegal or improper practice that might be disclosed, and was not calculated or intended to elicit information as to office cars as herein defined, and that the Commission's report, 155 I. C. C. 775, including its summary or condensation of the record, does not indicate or intimate that the practice of moving office cars, as herein defined, was contrary to law, or prejudicial, or discriminatory.

Petitioners are confident that the defendants cannot point to any evidence in said record to support a finding that the practice of moving office cars, as herein defined, was prejudicial or discriminatory, and that they will not undertake to do so when the record is produced at the trial. They respectfully show to the court that it is unjust and oppressive under the circumstances to require the petitioners to go to the great expense of producing a certified copy of said record in a case such as this where no cost can be taxed against the Government, and where the record now in possession of the defendant Commission can be produced by it without substantial expense to anyone, if that technical formality should be deemed necessary.

V

Petitioners further state that they have made all reasonable efforts to obviate the unnecessary expense in the production of said record. They have repeatedly offered to [fol. 21] agree, and are now ready to agree, with counsel for the defendants that the summary of the facts in the record contained in the Commission's report (155 I. C. C. 775), which is made by law prima facie evidence of the facts in the record, shall be accepted by all parties in lieu of the production of said record, or a certified copy thereof, and shall be deemed and taken to be the record in this case for all purposes, but counsel for defendants have declined to enter into any agreement of this nature. Pe-

titioners have further endeavored to agree with counsel for defendants upon a narrative statement in simple and condensed form of all parts of the record essential to a decision of the questions presented in this case, but counsel for defendants have declined to consider any effort to agree upon a statement of this character.

Wherefore petitioners pray, in the alternative, as above stated, for an order requiring the production of said record at the trial, or for the issue of a subpœna duces tecum to secure its production at that time.

Frank H. Moore, A. F. Smith, Cyrus Crane, Attorneys for Petitioners. Samuel W. Moore, of Counsel.

Rec'd copy 5-19-30. Wm. L. Vandeventer, by Dorothy L. Connet.

[fol. 22] EXHIBIT "A" TO MOTION

AT A GENERAL SESSION OF THE INTERSTATE COMMERCE COMMISSION, HELD AT ITS OFFICE, IN WASHINGTON, D. C., ON THE 7TH DAY OF DECEMBER, A. D. 1925

No. 17757

In the Matter of the Use of Private Passenger-train Cars

Order

The matter of the use of private passenger-train cars being under consideration:

It is ordered, That the Commission upon its own motion enter upon an investigation into and concerning the use of private passenger-train cars, including so-called office cars, in the transportation of persons by all common carriers of Classes I and II and switching and terminal carriers by railroad within the United States subject to the interstate commerce act, with a view to making such order or orders in the premises as may be warranted by the record.

It is further ordered, That all Classes I and II and switching and terminal carriers by railroad within the

United States subject to the interstate commerce act be, and they hereby are, made respondents hereto, that this order be served upon all such carriers, and that notice of this order be given to the general public by depositing a copy of the order in the office of the Secretary of the Commission at Washington, D. C.;

And it is further ordered, That this proceeding be assigned for hearing at such times and places as the commission may hereafter direct.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 23] EXHIBIT "B" TO MOTION

INTERSTATE COMMERCE COMMISSION, WASHINGTON

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 5th Day of April, A. D. 1926

No. 17757

In the Matter of the Use of Private Passenger-train Cars

Supplemental Order

The matter of the use of private passenger-train cars being under consideration.

It is ordered, that each Class I and II carrier and each switching and terminal carrier by railroad within the United States subject to the Interstate Commerce Act, furnish this Commission the information called for in the questionnaire attached hereto, not later than July 1, 1926.

It is further ordered, that a copy of this order be served upon each Class I and II carrier and upon each switching and terminal carrier by railroad within the United States subject to the interstate commerce act, and that notice of this order be given to the general public by depositing a copy of the order in the office of the Secretary of the Commission at Washington, D. C.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 24] INTERSTATE COMMERCE COMMISSION, WASHINGTON

No. 17757

In the Matter of the Use of Private Passenger-train Cars

Questionnaire

It is desired that each carrier furnish a statement of all Business, Official, or other Private Passenger-Train cars owned or leased, and transported at less than published tariff rates, during each of the years, 1923, 1924 and 1925. Also to furnish statements of all free transportation movements and of all transportation movements at less than published tariff rates of all Business, Official or other Passenger Train Cars for each of the years 1923, 1924 and 1925. These statements to be appropriately classified as provided under questions 2, 3, 4, and 5, which follows:

1. Name of Railroad or System.

2. Statement of Business, Official or other Private Passenger Train Cars owned, or leased, and transported free, or at less than published tariff rates, during the years 1923, 1924 and 1925.

Car		If assigned to whom?	
Initial	Number or name	Name	Occupation
		..	..
		..	

3. Home Cars on Home Railroad.

[fol. 25] Trips made on your own line by the above listed Business, Official, or other Private Passenger-Train Cars owned or leased, and transported free or at less than published tariff rates, during the years 1923, 1924 and 1925.

(a) Car: Initial, Number, or Name.
(b) Left Headquarters of Car (Station).
(c) Date.
(d) For Destination (Station).
(e) Returned to Headquarters (Station).
(f) Date.
(g) Occupants of car.

Name	Occupation	Transportation pass or ticket
		..
		..

(h) Total Mileage of Trip.

(i) Grand Total Mileage of Above Cars for the Years 1923, 1924 and 1925.

4 Home Cars on Home and Foreign Railroads

Trips made on other lines by the above listed Business, Official or other Private Passenger Train Cars owned or leased, and transported free or at less than published tariff rates, including the portion of trips made on respondent's line, during the years 1923, 1924 and 1925.

(a) Car: Initial, Number, or Name

(b) Left Headquarters of Cars (Station)

[fol. 26] (c) Date

(d) Delivered to (Connecting Line) (Station or Junction)

(e) Date

(f) For (Destination)

(g) Via (Route)

(h) Returned to Your line, Via (Route)

(i) Received from (Connecting Line) at (Station or Junction).

(j) Date

(k) Arrived at Headquarters of Car (Station)

(l) Date

(m) Occupants of Car

Name (occupation) Representing

(n) Total Mileage of trips separated as between your own line and on other line or lines.

(o) Grand Total Mileage separated as between your own line and on other line or lines for the years 1923, 1924 and 1925.

(5) Foreign Cars on Home Railroad

Trips made on this line by Business, Official, or other Private Passenger Train cars owned or leased by other lines and transported free by respondent, or at less than published tariff rates, during the years 1923, 1924 and 1925.

(a) Car: Initial, Number, or Name

(If car is not of railroad ownership show name of owner or lessee.)

[fol. 27] (b) Received on This Line from (Railroad)

(c) At (Station or Junction).
(d) Date.
(e) Delivered to Destination, if on this line (Station).
(f) Date.
(g) Delivered to Connecting Line (Railroad).
(h) At (Station or Junction).
(i) Date.
(j) Occupants of Car.

(k) Commissary or other supply items, water, fuel, ice, telephone service or other service items furnished while on your line. Yes or no thereof.

(l) Were these items billed to the occupant, foreign railroad or absorbed by your own line?

(m) Total mileage of trip on your line.

(n) Grand total mileage of other line cars on your line for the years 1923, 1924 and 1925.

(o) Attach copies of forms, reports, statements used in connection with the handling of all Business, Official, or other Private Passenger Train Cars transported at less than published tariff rates.

Oath.

State of
County of

I, (Name of person), the undersigned (Title) of the (Full name of respondent), do, on my oath, declare that the foregoing returns have been prepared by me or at my direction from the books and records of said (Full name of respondent), that I have carefully examined or caused to be examined each and every answer or statements herewith submitted, and that all of said answers and statements are true and correct to the best of my knowledge, information, and belief.

Subscribed and sworn to before me this ___ day of ___, 1926.

made and entered on the 4th day of November, 1929, requiring the plaintiffs and all other carriers subject to the Commission's jurisdiction to cease and desist from transporting private passenger train cars, including so-called office cars, of other carriers, free, or at other than published tariff rates, and to enjoin and set aside a regulation of the Commission, made and entered on the 30th day of July, 1929, prohibiting the issual of car passes, except for cars owned by the issuing carrier, or held by it under lease for use in its service as a common carrier, and except for cars of lines operated as a part of the system of the issuing carrier. The validity of the regulation complained of is dependent upon whether or not the Commission had the authority to issue the order of November 4, 1929, referred to.

The order of November 4, 1929, was issued as the result of a proceeding in the so-called Private Passenger Car case, No. 17767, instituted on the Commission's own motion, as authorized by Section 19a of the Interstate Commerce Act. A questionnaire was sent to all Class I and Class II carriers and to switching and terminal carriers, calling for information relative to the movement, handling and use of private passenger train cars, owned, leased or operated on home and foreign lines. Sworn returns were filed by three hundred and eighty-seven carriers of the United States, covering the calendar years 1923, 1924 and 1925. A proposed report was served upon the plaintiffs and upon all other carriers affected, and, within the time allowed, exceptions were filed by the Association of Railway Executives, on behalf of its membership, based upon substantially the same contentions as are advanced by the plaintiffs in this proceeding. After a full hearing, the Commission issued its report on June 21, 1929. Its findings and conclusions are summarized in the syllabus of the report as follows:

"1. The transportation or movement of private passenger cars, including so-called office cars, by one carrier for another or its officials, free or at other than published tariff rates is contrary to the provisions of the interstate commerce act.

2. It is unjustly discriminatory and unduly preferential and prejudicial to haul such private cars of other carriers

free, or at less than published tariff rates, while charging certain minimum fares and revenue for the movement of [fol. 34] privately owned or chartered cars.

3. The transportation of persons in private passenger cars, including berth and other accommodations, at the rate charged passengers provided only with ordinary coach accommodations is unjustly discriminatory and unduly preferential and prejudicial."

The exceptants to the report having waived any further hearing, the Commission, on the 4th day of November, 1929, entered the order complained of. The order recites as its basis the findings and conclusions set out in the Commission's report.

The plaintiffs are not complaining of the third finding summarized in the syllabus of the report, and repeated in the order, but profess their willingness to correct the practice therein condemned in a manner satisfactory to the Commission. Their objections are addressed to the findings summarized in the first and second headings of the syllabus, and to the order of the Commission commanding a cessation of the practices therein condemned as illegal. There has been filed as a part of the record in this case the entire record considered by the Interstate Commerce Commission, and the case is before us on final submission.

There is no disagreement as to the facts. The sole question is whether or not the Interstate Commerce Commission, under the law, has the authority to deal with the matters attempted to be dealt with in the order complained of.

The applicable law is found in Section 1(7), Section 22(1), Section 6(1) (7), Section 2 and Section 3(1) of the Interstate Commerce Act, as amended by the Transportation Act of 1920. The pertinent parts of Section 1(7) and Section 22(1) are as follows:

[fol. 35] Section 1(7). "No common carrier subject to the provisions of this chapter, shall, directly or indirectly, issue or give any interstate free ticket, free pass or free transportation for passengers, except to its employees and their families, its officers, agents, surgeons, physicians and attorneys at law; * * * Provided, that this provision shall not be construed to prohibit, the interchange of passes

for the officers, agents and employees of common carriers and their families; * * *"

Section 22(1). "Nothing in this chapter shall prevent the carriage, storage or handling of property free, or at reduced rates, for the United States, State or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, * * * Nothing in this chapter shall be construed to prevent railroads from giving free carriage to their own officers and employees or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; * * *"

Section 6(1) requires every common carrier subject to the provisions of the Act to file with the Interstate Commerce Commission, and to print and keep open to public inspection, its schedule of fares and rates for the transportation of passengers and property, and Section 6(7) prohibits any common carrier subject to the provisions of the Act from engaging or participating in the transportation of passengers or property, unless the fares, rates and charges upon which the same are transported by such carrier have been filed and published as provided in Section 6(1), and further prohibits any departure from the published schedules.

Section 2 and Section 3(1) of the Act are as follows:

Section 2. "If any common carrier subject to the provisions of this chapter shall, directly or indirectly, by any special rate, rebate, drawback or other device, charge, demand, collect or receive from any person or persons a [fol. 36] greater or less compensation for any service rendered or to be rendered in the transportation of passengers or property or the transmission of intelligence, subject to the provisions of this chapter, than it charges, demands, collects or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation or transmission of a like kind of traffic or message under substantially similar circumstances and conditions, such common carrier shall be deemed guilty or unjust discrimination, which is prohibited and declared to be unlawful."

Section 3(1). "It shall be unlawful for any common carrier subject to the provisions of this chapter to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic in any respect whatsoever, or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

As shown by its report, the Commission proceeded upon the theory that a private passenger train car or office car of one carrier, when hauled over the line of another carrier, and occupied by an officer or employee of the owning road holding a pass issued by the moving carrier, moves as an article of commerce, and not as a transportation facility of the moving carrier, and that therefore it can not be moved by such non-owning carrier over its line, except in strict compliance with Section 6(1) (7) of the Interstate Commerce Act, hereinbefore referred to. Having reached the conclusion that the movement of such car on the line of a non-owning carrier is the transportation for another of an article of commerce by such carrier, rather than the use by the moving carrier of a transportation facility, the Commission found that its free transportation by such non-owning carrier constitutes an unjust discrimi- [fol. 37] nation, denounced in Section 2 of the Act, and the giving of an undue and unreasonable preference and advantage, prohibited by Section 3 of the Act.

Starting with the premise that a common carrier has the right, under Section 1(7) and Section 22(1) of the Interstate Commerce Act, to exchange passes with other common carriers for their officers, employees and their families, and the further premise that the Interstate Commerce Commission has no authority under the law to control the method or plan by which a carrier acquires its facilities of transportation, the plaintiffs argue that when a common carrier exercises its legal right to issue a pass to an officer or employee of another common carrier, or to members of their families, in exchange for a like courtesy, it has the right to transport such pass holder in whatever appropriate vehicle it may see fit to use; that it may haul such pass holder in one of its own cars, in a leased car, or in a car owned by the carrier of which the pass holder is an officer

or employee, and lent to the moving carrier for the purpose of transporting the pass holder; that from whatever source the car may be obtained, it is a transportation facility of the moving carrier, and not an article of commerce, for the movement of which it must charge the owning carrier the published tariff rate.

The plaintiffs further contend that the provisions of the Interstate Commerce Act, requiring the filing and publication of tariff schedules, and adherence thereto, and the provisions of Sections 2 and 3 of the Act, against unjust discrimination and undue or unreasonable preferences, have no application to persons or property which the law permits to be moved free or at reduced rates.

It is further argued that the alleged long-continued [fol. 34] sanction by the Interstate Commerce Commission of the practice condemned in the order complained of constitutes a binding interpretation of the Act as permitting the practice now condemned, and that Congress in re-enacting the Act's provisions with reference to passes and reduced rates has impliedly adopted such interpretation.

The Commission being a creature of statute, of course has only such powers as are delegated to it by statute and such powers as are implicitly within its delegated powers. It is thoroughly settled that the Commission has no power to control the judgment of the carrier in the matter of its adjuncts to supply itself with the necessary equipment to perform its duties as a common carrier of passengers. It is free to own, lease or borrow its equipment. Chicago, St. Louis & New Orleans R. R. Co. v. Pullman Southern Car Co., 139 U. S. 79; Schofield v. Lake Shore & Michigan Southern Ry. Co., 114 U. S. 615; The Worcester Parlor Car Co. v. Pennsylvania R. R. Co., 95 U. S. 464. Therefore, when a carrier issues to pass to an officer or employee of another carrier, it has the right to perform its contract of carriage of the pass holder in equipment of its own or borrowed or leased equipment. The duty to acquire its equipment, however, does not imply the right to arrange such equipment as to give the pass holder passenger an undue preference or advantage over paying passengers.

It was the purpose of Congress, in enacting the Interstate Commerce Act, to strike down all forms of unjust

discrimination, favoritism and inequality on the part of common carriers in the performance of their duties as such. No common carrier subject to the provisions of the Act has a right to give, and no person has a right to accept [fol. 39] from such carrier, any undue preference or advantage. Any act or practice which may be reasonably construed as an unjust discrimination or as an undue preference or advantage, is undoubtedly a matter within the jurisdiction and subject to the control of the Commission, unless authority for such act or practice can be found in the Act itself. New York, New Haven & Hartford R. R. Co. v. Interstate Commerce Commission, 200 U. S. 361; L. & N. R. R. Co. v. Mottley, 219 U. S. 467. In determining if a particular act or practice is excepted from the provisions of the Act, the Act should not be liberally or loosely construed for the purpose of enlarging the meaning of the exceptions therein contained, but, in view of the cardinal purpose of the Act to prohibit unjust discriminations and unreasonable preferences, all exceptions should be strictly construed, and the words of the exceptions should be given their usual and ordinary meaning.

But for the exceptions found in Section 1(7) and Section 22(1), a railroad carrier subject to the provisions of the Act would have no right to give a pass to any person, and the giving of such a pass would undoubtedly be a violation of Sections 2 and 3 of the Act. The exceptions found in Sections 1(7) and 22 are simply a statutory declaration that the giving of passes by the classes therein named shall not be considered as an unjust discrimination under Section 2, nor as an undue or unreasonable preference under Section 3. However, when Congress authorized the carriers affected by the Act to give free tickets or passes to their own officers and employees and their families, and to exchange with other such carriers passes for their officers and employees, we must assume that Congress used the [fol. 40] words "free ticket", "free pass" and "pass" in the sense that those words are commonly and ordinarily understood. A person a free ticket, as ordinarily understood, requires free transportation in the ordinary way and with the usual conveniences afforded the paying public. To construe the permission to grant free passes and

free tickets, contained in Section 1(7) and Section 22(1), as authorizing not only free transportation of the holder, but transportation in a private car with all the conveniences thereof, would amount to a distortion of the language used and a perversion of the central purpose of the Act. A fair interpretation of the two sections referred to, when they are read in connection with the other provisions of the Act, is that they authorize the giving of free transportation to the persons therein named, with jurisdiction in the Commission to determine if the method of transporting the pass holder, and the conveniences afforded him, constitute an unjust discrimination, prohibited by Section 2, or the giving of an undue or unreasonable preference, within the meaning of Section 3 of the Act.

Construing the Act in this way, it seems to us wholly immaterial whether we view the private or office car, occupied by a pass holder who is an officer or employee of the owning road, as an article of commerce when moving over the line of a non-owning carrier, or as a transportation facility of the moving carrier. If it is an article of commerce, it is being transported free for the benefit of the pass holder; if it is a transportation facility of the moving carrier, it is being furnished free to the pass holder. In either event he enjoys the service thus afforded as a privilege granted by [fol. 41] his pass, and the service and the facilities thus afforded him so far exceed those furnished ordinary paying passengers as to bring the practice clearly within the jurisdiction of the Interstate Commerce Commission.

We are not impressed with the argument of the plaintiffs that inasmuch as there can be no discrimination or preference under the Act except between persons or articles of the same class, preferential treatment of the pass holder can not constitute a violation of the Act. Pass holders and paying passengers are of the same general class—they are all passengers. It costs no more to transport one than the other. The pass holder is lifted out of the provisions of the Act only to the extent that he does not have to pay the usual and ordinary transportation charges exacted of other passengers. In every other respect he is on the same footing as other passengers, and if the facilities afforded him are found by the Commission, upon substantial evidence, to amount to an unjust discrimination or an undue or unreasonable preference, the Commission has the power

under the Act to deal with the matter without interference from the courts.

The plaintiffs suggest that such a construction of the Act would prohibit common carriers from furnishing their officers and employees and the officers and employees of exchanging roads with passes carrying ordinary Pullman accommodations, which practice has always had the sanction of the Commission. It must be remembered, however, that the Act does not denounce every preference or discrimination. What is prohibited is unjust discrimination and unreasonable and undue preferences. We can very well understand how the Commission may consider that the [fol. 42] granting of Pullman privileges to a pass holder is not an unjust discrimination against paying passengers nor an unreasonable preference in favor of the pass holder, and yet hold that to furnish the pass holder with a private car is an unjust discrimination and an undue preference.

Being of the opinion that the Act is clear and unambiguous, the plea of contemporaneous construction and the adoption of that construction by Congress, of course must be rejected. United States v. Missouri Pacific R. R. Co., 278 U. S. 269.

For the reasons stated, we conclude that the practice condemned by the Commission is a matter within its jurisdiction, and, being supported by substantial evidence, we are without power to interfere. Chicago, R. I. & P. Ry. Co. v. United States, 274 U. S. 29; Virginian Ry. Co. v. United States, 272 U. S. 658.

We are not to be understood by what has been here said as holding that the Act confers upon the Commission the power to prohibit a common carrier from hauling its own officers and employees free over its own lines in a private car when they are engaged in the duties of their employment.

A decree conforming to the views herein expressed may be prepared and presented for entry.

May 28, 1930.

Chas. H. Moorman, Smith Hicketlooper, Chas. I. Dawson, Edward S. Jouett, R. V. Fletcher, John J. Cornwell, Robert B. Tunstall, H. N. Quigley, Alfred P. Thom, Alfred P. Thom, Jr., Counsel for Plaintiffs. Daniel W. [fol. 43] Knowlton, Counsel for Interstate Commerce Commission. Elmer B. Collins, Special Assistant Attorney General, for the United States.

[fol. 44] In United States District Court, Western District of Missouri, in the Western Division.

In Equity. No. 1450

The Kansas City Southern Railway Company and Texarkana and Fort Smith Railway Company, Plaintiffs,

v.

United States of America and Interstate Commerce Commission, Defendants.

Final Decree. Filed Sept. 19, 1930.

The above entitled cause come on for hearing upon petition for a temporary and a permanent injunction, and such hearing having been held and the arguments and briefs of counsel for the parties having been heard and considered, and the Court having reached the conclusion, for the reasons set forth in its opinion filed herein on August 27, 1930, which is hereby referred to and made a part of this decree, that the relief prayed in the petition should be denied:

It is, therefore, Ordered, adjudged and Decreed that the relief prayed by the plaintiffs be and the same is hereby denied, and the petition is hereby dismissed for want of equity.

This 19 day of September, 1930.

Kimbrough Stone, United States Circuit Judge. Albert L. Reeves, United States District Judge. Merrill E. Otis, United States District Judge.

[fol. 45] In United States District Court

[Title omitted]

Petition for Appeal by the Kansas City Southern Railway Company and Texarkana and Fort Smith Railway Company—Filed Sept. 19, 1930.

To the Honorable Kimbrough Stone, United States Circuit Judge, and Albert L. Reeves and Merrill E. Otis, United States District Judges:

Now come The Kansas City Southern Railway Company and Texarkana and Fort Smith Railway Company, being the plaintiffs herein, by their solicitors, and feeling aggrieved by the final order or decree of the District Court made and entered herein, on to wit: September 19th, 1930, do hereby appeal therefrom to the Supreme Court of the United States, and they pray that their appeal be allowed and that citation be issued as provided by law.

The particulars wherein they consider the final order or decree erroneous are set forth in the assignment of errors on file, to which reference is made.

They pray that a transcript of the record, proceedings and papers on which the final order or decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

And they further pray that the proper order relating to the security to be required of them be made.

Samuel W. Moore, Frank H. Moore, A. F. Smith,
[fol. 46] Cyrus Crane, Solicitors for Plaintiffs.

[fol. 47] In United States District Court

[Title omitted]

Assignment of Errors—Filed Sept. 19, 1930

The Kansas City Southern Railway Company and Texarkana and Fort Smith Railway Company, plaintiffs and appellants herein, come now by their counsel, and in connection with their petition for appeal, file the following

2. The lower court erred in holding that, because the railway companies of the country had published tariffs requiring a minimum number of tickets for the transportation of chartered or privately owned cars when used by the traveling public generally, such companies thereby became common carriers of office cars of other companies moving over their lines, even when such office cars were occupied by the officers and employes of the company owning the car, traveling on free transportation in the interest of and in connection with the operation of their own road, where such railway companies have never held themselves out by pub-

Wherefore the plaintiffs and each of them pray that the final order or decree of the District Court, entered on, to wit: September 19th, 1930, be reversed, annulled and set aside, with directions that the said orders entered by the Interstate Commerce Commission in its said Docket No. 17756, In the Matter of Use of Private Passenger Train Cars, 155 I. C. C. 775, shall be permanently enjoined, set aside, annulled and held for naught, in part as aforesaid,

and plaintiffs further pray for such other and further order as may be appropriate.

Samuel W. Moore, Frank H. Moore, A. F. Smith, Cyrus Crane, Solicitors for Plaintiffs and Appellants.

[fol. 50] In United States District Court

[Title omitted]

Order Allowing Appeal. Filed Sept. 19, 1930

Upon the entering of the final decree in this cause came Samuel W. Moore and Frank H. Moore, solicitors and counsel for plaintiffs, and filed assignment of errors and petition for appeal, and it is hereby ordered that an appeal by the plaintiffs in the above entitled cause to the Supreme Court of the United States from the decree heretofore filed and entered herein on September 19th, 1930, be and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations, and all proceedings be forthwith transmitted to the said Supreme Court of the United States, said appeal being hereby made returnable thirty days from the date hereof.

It is further ordered that the bond on appeal be and the same is hereby fixed at the sum of Five Hundred Dollars.

Dated September 19th, 1930.

Kimbrough Stone, United States Circuit Judge. Albert L. Reeves, Merrill E. Otis, United States District Judges for the Western District of Missouri.

[fol. 51] In United States District Court

[Title omitted]

Notice of Appeal. Filed Sept. 27, 1930

To the Honorable Stratton Shartel, Attorney General State of Missouri:

You are hereby notified that the plaintiffs in the above entitled case, which is a suit to enjoin, set aside and re-

strain certain orders of the Interstate Commerce Commission in a proceeding before that Commission entitled Docket No. 17757, "In the Matter of the Use of Private Passenger Train Cars," 155 I. C. C. 775, having taken an appeal from the final order or decree made and entered in the district court in the above entitled cause on the 19th day of September, 1930, to the Supreme Court of the United States; and that the order allowing the appeal makes the same returnable within thirty days from September 19th, 1930.

This notice is given to you pursuant to the provisions of the Urgent Deficiencies Act of October 22, 1913 (38 Stat. L. 220, 221).

Samuel W. Moore, Frank H. Moore, A. F. Smith, Cyrus Crane, Solicitors for Plaintiffs.

Service of a copy of the above notice is hereby acknowl-[fol. 52] edged this 25th day of Sept., 1930.

Stratton Shartel, Attorney General of the State of Missouri, by Walter E. Sloat, Asst. Atty. Genl.

[fol. 53] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF LODGMENT OF NARRATIVE STATEMENT OF EVIDENCE IN ACCORDANCE WITH RULE 75 OF THE RULES OF PRACTICE IN EQUITY—Filed Oct. 4, 1930

To the United States of America and Interstate Commerce Commission, defendants and appellees:

You and each of you are hereby notified that the petitioners and appellants, the Kansas City Southern Railway Company and the Texarkana and Fort Smith Railway Company have on this 22nd day of September, A. D. 1930, lodged in the office of the clerk of the said court at Kansas City, Missouri, a condensed statement in narrative form of the evidence taken in this case, including the evidence taken before the Interstate Commerce Commission, which was introduced in evidence in this case; and that a true and correct copy of the said condensed statement is hereto attached for your information.

You are hereby further notified that the appellants herein will on the 9th day of October, A. D. 1930, at 9:30 A. M., or as soon thereafter as counsel can be heard, present such condensed statement in narrative form of the said evidence to the court rendering the decree herein or some judge thereof, either in court or chambers, at the Federal Building at Kansas City, Missouri, and will ask the said court or some judge thereof to approve such condensed statement at which time and place you may appear and be heard if you so desire.

[fol. 54] Samuel W. Moore, Frank H. Moore, A. F. Smith, Cyrus Crane, Solicitors for Appellants.

Service of said notice of lodgment of the said evidence and receipt of copies of the said notice of lodgment of evidence and of the said statement of evidence are hereby admitted and acknowledged upon the dates shown below.

United States of America, by Elmer B. Collins, Sept. 30, 1930. Interstate Commerce Commission, by David W. Knowlton, Sept. 30, 1930.

[fol. 55] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Oct. 4, 1930

To the Clerk:

Please prepare a transcript of the record in the above-entitled cause in the matter of the appeal of The Kansas City Southern Railway Company and the Texarkana and Fort Smith Railway Company, petitioners and appellants herein, and include therein in the order given below the following matter together with record of dates of filing thereof, viz:

1. Petition.
2. Answer of the United States of America.
3. Answer of the Interstate Commerce Commission.
4. Notice to require production of documents in possession of Interstate Commerce Commission.

5. Narrative statement agreed upon by the parties and/or approved by the court in evidence introduced at the hearing before the court in this case including evidence introduced before the Interstate Commerce Commission.

6. Notice of lodgment of the said narrative.

7. Opinion of the District Court.

8. Final Decree.

9. Petition for appeal.

10. Assignment of errors.

11. Order allowing appeal.

[fol. 56] 12. Appeal bond.

13. Citation.

14. Notice of appeal to Attorney General of the State of Missouri.

15. All journal entries and orders of court in their proper order.

16. Præcipe for record.

Samuel W. Moore, Frank H. Moore, A. F. Smith, Cyrus Crane, Solicitors for Petitioners and Appellants.

Service of the foregoing præcipe for record and receipt of a copy thereof are hereby admitted and acknowledged upon the dates shown below.

United States of America, by Elmer B. Collins, Sept. 30, 1930. Interstate Commerce Commission, by David W. Knowlton, Sept. 30, 1930.

[fol. 57] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE OF UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS, FOR ADDITIONAL PORTIONS OF RECORD TO BE INCORPORATED INTO THE TRANSCRIPT OF THE RECORD FOR THE UNITED STATES SUPREME COURT—Filed Oct. 8, 1930

To the Clerk of the United States District Court for the Western Division of the Western District of Missouri:

Defendants hereby file this præcipe asking that additional portions of the record be incorporated into the transcript, namely:

The following recapitulations (from the return of petitioners) showing separately for said petitioners the number of trips of their private passenger or other cars (transported free when occupied by passholders), number of occupants holding passes and number holding tickets, mileage covered on home and foreign lines and mileage of foreign cars (transported free when occupied by passholders) on petitioners' lines. The evidence so shown in said recapitulations is to be included in the transcript as in addition to and supplemental to petitioners' "Narrative statement of the evidence in accordance with Rule 75 of the Rules of Practice in Equity" heretofore filed herein.

(Here follow recapitulations, omitted from this).

[fol. 59] Elmer B. Collins, Solicitor for United States. Daniel W. Knowlton, Solicitor for Interstate Commerce Commission.

Service of the foregoing praecipe asking that additional portions of the record be incorporated into the transcript, and the receipt of a copy thereof, are hereby admitted and acknowledged this 6th day of October, 1930.

Frank H. Moore, Cyrus Crane, Solicitor for Petitioners. Samuel W. Moore, of Counsel.

[fol. 60] In United States District Court

No. 1450 In Equity

The Kansas City Southern Railway Company and Texarkana and Fort Smith Railway Company, Petitioners,

vs.

United States of America and Interstate Commerce Commission, Defendants

Narrative Statement of the Evidence in Accordance with Rule 75 of the Rules of Practice in Equity—Filed Oct. 9, 1930

Caption

Be it remembered, That on June 16, 1930, the above entitled cause came on regularly for hearing before the Hon-

[fol. 58] Railroad	Year	Number of private cars	Home cars on home railroad				Home cars on home and foreign railroads			
					Transportation				Transportation	
			Trips	Occupants	Pass	Ticket	Trips	Occupants	Pass	Ticket
Kansas City Southern Ry.)*	1923	4	56	256	253	3	26	112	92	20
Texarkana & Ft. Smith Ry.)*	1924	5	66	308	298	10	33	159	143	16
	1925	6	85	380	365	15	36	169	143	26

Railroad	Year	Mileage			
		Home cars on home roads	Home cars on home and foreign roads		Foreign cars on home roads
			Own line	Other lines	
Kansas City Southern Ry.)*	1923	61,798	12,118	43,147	5,990
Texarkana & Ft. Smith Ry.)*	1924	76,779	16,834	48,110	5,889
	1925	98,571	18,457	50,383	8,089

* Returns made jointly.

Year	Number of private cars	Home cars on home railroad				Home cars on home and foreign railroads				Foreign cars on home railroad			
				Transportation				Transportation				Transportation	
		Trips	Occupants	Pass	Ticket	Trips	Occupants	Pass	Ticket	Trips	Occupants	Pass	Ticket
1923	4	56	256	253	3	26	112	92	20	20	44	42	2
1924	5	66	308	298	10	33	159	143	16	20	47	46	1
1925	6	85	380	365	15	36	169	143	26	29	54	53	1

Year	Mileage			
	Home cars on home roads	Home cars on home and foreign roads		Foreign cars on home roads
		Own line	Other lines	
1923	61,798	12,118	43,147	5,990
1924	76,779	16,834	48,110	5,889
1925	98,571	18,457	50,383	8,089

orable Kimbrough Stone, Circuit Judge, and the Honorable Albert L. Reeves and the Honorable Merrill E. Otis, District Judges. Appearances of counsel; for the petitioners, Samuel W. Moore, Cyrus Crane and Frank H. Moore; for the United States, Elmer B. Collins, its Solicitor; for the Interstate Commerce Commission, Nelson Thomas.

C. E. Johnston, called as a witness by petitioners, being duly sworn, testified as follows:

I am President of The Kansas City Southern Railway Company and have been connected with that company between 23 and 24 years. I have been in the railway service practically all of my life. I am familiar with the custom that has obtained in the United States with reference to the movement of office cars. By office car I mean an office car occupied exclusively by officers and employees and traveling exclusively upon the business of the company. It has been the practice of carriers to move office cars for each other without charge therefor much longer than I can re- [fol. 61] member. As far as I know that has always been the practice up to the time of the making of this order by the Commission.

The uses and advantages of office cars, speaking now for the Kansas City Southern, are many. We have five office cars. The approximate value of the five cars, the average value of the five cars will run between $45,000.00 and $50,000.00 each. They are fully equipped for offices. I mean by that each officer to which an office car is assigned has his office files in the car. He carries supplies, office supplies, carries a secretary, and is equipped to do most all kinds of office work, and in addition to that the cars are equipped for food and for sleeping quarters, so that he is in his office twenty-four hours a day. It is quite true that it is really an office on wheels as the Commission says in this case. Most of our officers conduct more actual office work while on the road in their cars than they can in their offices at headquarters. They do more work there because they are without interruption. As to whether these office cars are or have been continuously in use on the line of the Kansas City Southern daily or practically daily for many years, most every day in the year will find one or more office cars in service on the line of railroad. I would say that they are

a very necessary and play a very important part in the operation of our railroad.

It is necessary upon occasion to move the office cars of the railroad, a railroad like the Kansas City Southern, over foreign lines in connection with the business of the company when the office car is occupied by officers and employes transacting their usual daily business. There are many instances when it means a great deal to the officer who has to move to other centers in connection with his business to [fol. 62] have with him his office. For instance, our Eastern headquarters are in New York, our Board of Directors meets in New York, and we have monthly meetings. I am President of the company and attend many of those monthly meetings. I am also a director, sit on the Board, and it is a very necessary thing, particularly in connection with the budgets, by budgets I mean the program of expenditures and budgeting of expenditures, or any important plans that you desire to present to the Board, that you have not only the records in the case, but you have facilities available so that you can change up those records when you get to New York headquarters. In that respect, the office cars equipped as they are on trips of that kind, are quite necessary. As to whether, if you use an office car, you take along your blue prints and all your files and records and stenographic assistants, and work continuously during the time of your trip to New York and back again, the facility is available for you to work continuously if you desire to do so. You sometimes do so. This is also true with reference to trips other officers of the company may be required to make. The Chairman of our Board, who is a director, makes trips from New York to the line. He makes them once a year anyway, usually in the spring of the year, and with him he brings other directors. They bring their correspondence that has accumulated during the year relating to the matters they wish to investigate while they are on the line, and an office car in a movement of that kind is almost a necessity, by reason of the fact that the subjects are so numerous and varied, so great in character, that it is almost necessary to have a car to bring the records in. A berth or compartment, or a drawing room, in a regular train, would not accommodate to any degree of satisfaction or efficiency, our blue prints and office files and equipment [fol. 63] we would have to take along in order to conduct

our ordinary daily work. As to whether, in addition to going from Kansas City to New York and back and from New York to Kansas City and back, as above described, there are other occasions where I deem it essential for myself or other officers to travel over foreign lines in an office car, an office car is a great time saver for an officer handling property. For instance, we have a great many meetings in Chicago, meetings called to discuss rates, meetings called to discuss labor schedules, and meetings called for many other purposes, and the same is true of meetings in St. Louis. We are rather unfortunate in Kansas City in having the headquarters here of but one of the trunk railroads, so to speak. The Kansas City Southern is the only road that has its headquarters in Kansas City. For that reason, many meetings are called in Chicago because it is headquarters for several lines, and in St. Louis because St. Louis is headquarters for several lines. Seldom ever is a meeting called for Kansas City because of the fact that we have but one headquarter, that is, the Kansas City Southern, in Kansas City. These meetings in various places are to meet with the executive officers say of the other companies, to discuss not only the business of our company but the business of the territory in which our company is interested. You desire to attend those meetings and you desire to save as much time for the company as it is possible. The meeting is called say for Chicago. You desire to attend that meeting and you have an appointment on your line of railroad at Shreveport, Louisiana, the day after, or at the earliest possible moment after you can attend this meeting in Chicago. To come around by Kansas City and get to Shreveport, Louisiana, it takes as a rule an additional day, and to go directly from Chicago to Shreveport through St. Louis you save a day, and in those [fol. 64] short moves of that kind, that is the short cuts between points of that kind, means much, a considerable saving in the officer's time, that is, by going on those trips in an office car with the office equipment saves your time. And it enables you while away from your headquarter at Kansas City to transact your business at any time or at all times during your absence, because you have your office —a sufficient part of your office with you, to enable you to do that. These office cars have been moved by other carriers in the past gratuitously, as a matter of courtesy or

reciprocity, reciprocal accommodation. In the past when we undertake to make an arrangement to move an office car over a foreign line we address the officer of the foreign line something like this: "if entirely consistent, will you kindly arrange movement of car so and so between such points". In some instances, if you are in a hurry to get to your particular destination and ask for a certain train, they will come back and say that train is overloaded at the present time, and it isn't consistent to move your car on that train, but there will be a train, number so and so, following within thirty minutes or an hour, we would be glad to move your car on, or we have a fast mail train not scheduled, an extra mail train, leaving at a certain hour that we would be glad to handle your car on. As to whether, if we make a request on them, they may grant it or they may not, and if they do grant it they may grant it upon such conditions as may tend to meet their convenience, it has always been the understanding if we ask them to move a car it is entirely in their hands whether they should move it or not. And if they would say, "We cannot move your car," then it means [fol. 65] that the car remains at home. We don't undertake to move it over that particular line. Or they may say, "Yes, we will move it but we will designate the train and place in the train where it shall go." They have always reserved that particular right. I would say that what I have told about the Kansas City Southern and its officers is fairly typical of other carriers of the country so far as I can judge. I think that is generally true. Mr. Collins objected to the last question and answer for the reason that this suit was brought by the Kansas City Southern to preserve its rights and not being brought on behalf of any other carriers.

The office cars are not moved under tariffs, but simply under some individual arrangement made in each case. We have no tariffs or have never had as far as I know tariffs covering movement of office cars. The company has never held itself out by tariffs or by advertisements or in any way as a common carrier of office cars.

Judge Stone: It seems that all of you gentlemen agree upon the essential fact but you don't like the conclusions that may be drawn by the witness. Can it be conceded or be a fair inference that the Kansas City Southern has

never applied for or published the tariff or held itself out to the public—by that I mean by circulars or any other way telling what it is going to do—covering office cars, unless that term by proper construction should be included in the term private cars?

Mr. Thomas: Yes, I think that is the actual fact, that is the term "private car" as stated in the tariffs which are on file.

The Court: Yes.

Mr. Moore: Of course, the whole purpose of this proceed-[fol. 66] ing is to compel the railroad to publish tariffs for office cars. I think that is a pretty strong indication there are none now.

Mr. Johnson: If the Commission's order is enforced, and we are prevented from moving cars on foreign lines, the Kansas City Southern will be deprived to a certain extent of the use of its private cars to which it has put them heretofore. If the tariff rates that are now applicable to chartered cars are put into effect, then I would say positively there would be very little riding on the foreign lines by our officers. That would be absolutely prohibited. In any event the use of our private cars would be very much restricted.

It is very helpful and convenient to the officers to have the private cars to make these trips on official business in the operation of the railroad. It saves their time, enables them to work en route in greater convenience than if they were in a drawing room, for instance, in an ordinary Pullman car. They have with them so many more office facilities than they could possibly have with them in a drawing room or a Pullman car. They have desks and tables, file cases and map cases in an office car. Those are all conveniences. As to whether that same convenience, all that same necessity of which I have spoken, would apply equally as well in the case of any business man who had to travel about the country, I would think if he could have a way of carrying his office with him, it would. There are a great many business men at the present time that pay the tariff rates of private cars to handle their business. They can afford to do it they think. As to whether the railroad official gets the same convenience free, I can't say that you

can say it is free because we extend the same courtesy to [fol. 67] the other line. I don't mean that we haul the car of another line exactly the same number of miles that they haul our car. There is no way to equalize the mileage. I understand that if we pay the tariff rate, the same as any other private car, that the Commission's order does not prohibit making trips by our cars on foreign lines. I don't mean to say that the officers of our road could not ride in ordinary Pullman cars like other passengers. They do. When they are off the line not in office cars they ride in Pullmans as a rule. I understand that the Kansas City Southern is still free to transport its office cars on the lines of other carriers if they pay a published tariff rate, pay for the transportation.

I am not prepared to say what might be considered a reasonable charge would enable us to operate our office cars freely to get the fullest benefit of them. No doubt under any application of a charge there would be some use by the office car, but the restricted use that may come from a rate that would be regarded too great for us to pay, to what extent that would be restricted, I am unable to say.

As to whether the use of office cars on our line is almost continuous every day, we have some of our cars on the line practically every day. The use of one of our office cars on a foreign line would not be every day. It would only be occasionally, not at any regular intervals, but as the meetings or as appointments of the line would dictate. Judging from that past, a maximum use we would make of our private cars or office cars on foreign lines would be three times a month. I would say that would be the maximum use. The occasions when we would use our office cars upon foreign lines, say three times a month, I would regard as [fol. 68] essential and necessary uses in the business of our company.

As to whether I stated on direct examination that there were no methods for the accounting of the mileage given or received with regard to our company's private office cars, I didn't mean to say that, at least I would say that there was no effort made to equalize the mileage made by our cars on foreign lines with the mileage made by their cars on our lines. Records are kept of the movement of all cars on our lines. There is an exact record kept of all

cars moved by all railroads so that you can get any mileage information you desire.

Petitioners next introduced in evidence a duly certified copy of the entire record of the Interstate Commerce Commission in No. 17757—In the Matter of the Use of Private Passenger Train Cars—in which the order complained of in the petition was entered.

The case was tried in this court on the testimony of Mr. Johnston and on the facts detailed in the report of the Interstate Commerce Commission (155 I. C. C. 775) as to what the practices of the carriers were. These facts, so detailed, the petitioners did not controvert, but they contended that, assuming them to be true, the Commission did not have lawful authority to enter so much of its order based thereon as prohibits one railroad subject to the Interstate Commerce Act from moving free, or on such terms as the interested carriers may be able to agree upon, the office car of another such railroad company when occupied by the officers and employees of such other company, entitled to and holding free transportation over the line of the transporting carrier, and traveling upon or in connection with the operation of such other company's railroad properties.

From the record of the Commission above referred to, [fol. 69] it appears that a questionnaire was sent by the Commission to all Class I and Class II carriers and switching and terminal carriers, calling for information as to private passenger train cars owned, leased, or operated, the movement or use of such cars as were transported free or at less than tariff rates on home and foreign lines, and the occupants of such cars on the respective trips. Returns or answers thereto were filed under oath by 387 carriers covering the calendar years 1923, 1924 and 1925.

The only evidence appearing in the record before the Commission was the returns or answers of the various carriers to this questionnaire. These answers covered many thousands of pages of statistical data, differing in details but being practically the same in substance. These returns or answers were correctly tabulated by the Commission, its tabulation being shown in Appendices A, B, C, D, E, F, G and H attached to the Commission's report in this case. The returns or answers sustained the statements of fact

made and detailed in the Commission's report and in its appendices as to what the practices of the carriers were. An official pamphlet copy of this report and the appendices is hereto attached as a part hereof. The returns and answers further showed that the illustrations of the different phases of the practice of transporting private passenger train cars, including so-called office cars, shown by the particular instances set forth in the text of the report and in Appendices C, D, E, F, G and H, were illustrative and typical of the practices of the carriers named in the Commission's order. The facts so stated and detailed in the Commission's report and its appendices (such particular instances being so regarded as illustrative and typical) constitute a full and complete statement, in simple and condensed form, of all the evidence or facts which were [fol. 70] contained in the record before the Commission on which it entered the order complained of in this case.

As appears from the order of the Commission herein, which is hereby made a part of this statement of evidence, the defendant carriers waived any further or additional hearing before the Commission to that which had been given prior to said order.

No part of the evidence in the case before the District Court, except as above stated and herein condensed, given orally and also contained in the record of the proceeding before the Interstate Commerce Commission, was pertinent, material or essential to the decision of any question presented on this appeal, and, accordingly, pursuant to the provisions of Equity Rule 75, all of it except what is herein contained is omitted.

Frank H. Moore, Cyrus Crane, Solicitors for Appellants. Samuel W. Moore, of Counsel.

14716

INTERSTATE COMMERCE COMMISSION

No. 17757

IN THE MATTER OF USE OF PRIVATE PASSENGER TRAIN CARS

Submitted March 14, 1929. Decided June 21, 1929

1. The transportation or movement of private passenger cars, including so-called office cars, by one carrier for another or its officials, free or at other than published tariff rates is contrary to the provisions of the interstate commerce act.
2. It is unjustly discriminatory and unduly preferential and prejudicial to haul such private cars of other carriers free, or at less than published tariff rates, while charging certain minimum fares and revenue for the movement of privately owned or chartered cars.
3. The transportation of persons in private passenger cars, including berth and other accommodations, at the rate charged passengers provided only with ordinary coach accommodations is unjustly discriminatory and unduly preferential and prejudicial.

Thomas P. Healy for Interstate Commerce Commission.

Alfred P. Thom, Alfred P. Thom, jr., and *R. H. Aishton* for Association of Railway Executives.

W. H. Lyford for Chicago & Eastern Illinois Railroad Company.

Report of the Commission

McManamy, *Commissioner:*

Exceptions to the proposed report were filed on behalf of the Association of Railway Executives and the Chicago & Eastern Illinois Railroad Company and oral argument has been had.

This is an investigation instituted on our own motion into and concerning the use of private passenger-train cars, including so-called office cars, in the transportation of persons, with a view to making such order or orders in the premises as may be warranted.

A questionnaire was sent to all Class I and II carriers and to switching and terminal carriers, calling for information as to private passenger-train cars owned, leased, or operated, the movement or use of such cars as were transported free or at less than tariff rates on home and foreign lines, and the occupants of such cars on respective trips. Returns were filed, under oath, by 387 carriers, covering the calendar years 1923, 1924, and 1925.

The returns to the questionnaire were so voluminous and the subject matter so diversified that a complete detailed analysis thereof is

impracticable within the limits of this report. Different phases of the subject have been considered generally and particular practices and instances cited as illustrations.

The returns show that a substantial portion of the total mileage of private passenger-train cars, including so-called office cars, herein referred to collectively as private cars, was on the lines of carriers other than those owning the cars. The private cars thus moved over foreign lines were transported without charge. In other words, a pass was issued covering transportation of the private cars similar to that issued for the transportation of certain classes of persons as provided for in sections 1 and 22 of the act.

A general summary of the data included in the returns to the questionnaire is contained in Appendix A, which shows separately for Class I roads, Class II roads, and for switching and terminal roads the number of private passenger cars owned or leased, number of trips, number of occupants holding passes, and the number holding tickets. In Appendix B is contained a statement, by roads, of the mileage of private passenger cars during the years 1923, 1924, and 1925 on home and foreign lines, also of the mileage of foreign cars on home lines. The data submitted by carriers covering movement of foreign cars on home lines do not in some cases agree with the data submitted by the owning carrier covering mileage of cars on foreign lines. These discrepancies are, however, of little importance and no attempt was made toward correction thereof.

It will be understood that a private car includes a kitchen, dining room, staterooms, and observation or sitting room, together with storage space and sleeping quarters for the cook and attendants. The facilities thus provided for those traveling in private cars excel the facilities of the ordinary coach or Pullman car.

The returns to the questionnaire show that the occupants of private cars are not restricted to officials and employees of the carriers but include in a large number of cases the families, relatives, and friends of railway officials traveling on passes or on tickets that would in most cases entitle them only to transportation in the ordinary coach. The following instances, which refer to movements of private cars of other carriers over the lines of the Atlantic Coast Line, Atchison, Topeka & Santa Fe,[1] New York Central, and Union Pacific, will illustrate the practices in these respects. The parties indicated were in charge of the cars.

[1] Hereinafter referred to as the Santa Fe.

	Miles
On the Atlantic Coast Line:	
1. Wife of director	664
2. Wife of director	1,327
3. Wife of chairman of board	3,000
4. Wife of vice president	54
5. Wife of president	108
6. Wife of senior vice president	340
7. Wife of vice president	651
8. Wife of vice president	389
9. Wife of vice president	108
10. Wife of chairman of board	274
11. Widow of deceased president	1,327
12. Daughter of chairman of board	631
13. Wife of general superintendent	155
14. Wife of vice president	464
On the Santa Fe:	
1. Wife of president	2,242
Car deadhead, Los Angeles, Calif., to Chicago, Ill	2,227
2. Widow and son of deceased vice president	2,242
3. Widow of deceased director	1,129
4. Widow of deceased president	2,006
Car deadhead to Kansas City, Mo	1,791
Car deadhead, Chicago, Ill., to Los Angeles, Calif	2,260
5. Widow of deceased president	2,260
6. Wife of president	2,242
Car deadhead, Los Angeles, Calif., to Chicago, Ill	2,242
7. Wife of vice president	1,919
Car deadhead, Los Angeles, Calif., to Kansas City, Mo	1,790
8. Widow of deceased director	1,705
9. Widow of deceased president	3,795
Car deadhead, Los Angeles, Calif., to Kansas City, Mo	
10. Wife of chairman of board	2,225
On the New York Central:	
1. Wife of president	812
2. Wife of director	876
3. Widow of deceased director	438
4. Widow of deceased director (in privately owned car.)	1,314
5. Wife of vice president	858
6. Wife of vice president	592
7. Wife of chairman of board	284
8. Wife of president	662
9. Wife of director	961
On the Union Pacific:	
1. Wife of director	1,550
2. Wife of president	2,522
3. Widow of deceased chairman of board (in privately owned car)	1,980
4. Wife of vice president	507
5. Widow of deceased vice president	2,434
6. Wife of executive vice president	1,980
7. Wife of chairman of board	990

On December 9, 1925, Chicago, Rock Island & Pacific car No. 1911 left Chicago, Ill., for Los Angeles, Calif., and return. This car was occupied by the general freight agent of the carrier and by the vice

president of the Studebaker Corporation and wife, together with four children and a maid. The mileage of this trip totaled 4,594 miles. On November 8, 1925, the same car traveled from Chicago to Champaign, Ill., over the Illinois Central and was occupied by the system freight-traffic manager of the carrier, who traveled on a pass, and by 15 other persons holding tickets. The returns to the questionnaire show that "most of these parties were engaged in the coal business."

On May 15, 1925, Pittsburgh & Lake Erie car No. 99 moved over the Louisville & Nashville from Louisville, Ky., to Cincinnati, Ohio. The car was in charge of the assistant to the president, and accompanying him were the following guests using tickets:

Vice president and wife, Standard Steel Spring Company.
President and wife, Schenango Furnace Company.
Official and wife, Severance Manufacturing Company.

There is also a substantial use of private cars, both on home and foreign lines, by directors of carriers. For example, Appendix C shows movements of private cars occupied by directors of the Pennsylvania Railroad. Trips of less than 200 miles on foreign lines are not included nor are trips between Pennsylvania Railroad points such as Chicago and St. Louis, Mo., via the Chicago & Alton included.

Attention is called to the record of movements of private cars occupied by or assigned to a vice president of one of the eastern carriers, which is shown in Appendix D. The same official is an executive of several other carriers in different parts of the country.

During the three-year period the eight private cars of the New York, Chicago & St. Louis [2] traveled 254,814 miles on foreign lines, while foreign-line cars traveled only 26,693 miles on that line. An analysis of the movements of these eight cars on trips involving both home and foreign lines is contained in Appendix E. These trips included trips to Florida, California, Michigan, Maine, French Lick Springs, Ind., Hot Springs, Ark., and White Sulphur Springs, W. Va. Included among the occupants in numerous instances were the wives of officials and in other instances the parties included guests holding tickets.

The movement of private cars to resorts commonly patronized by those seeking recreation or amusement, and located on foreign lines, is very noticeable. For example, the total mileage of private cars of other carriers over the Atlantic Coast Line leading to Florida during the three-year period was 456,683, and over the Richmond, Fredericksburg & Potomac was 227,312. In considering this figure it is to be borne in mind that the latter line is only 116 miles in length. The return of the Maine Central shows that the mileage of foreign private cars over that line was 41,521, which is almost twice the mileage of

[2] Hereinafter referred to as the Nickel Plate.

Maine Central private cars on its own line. During the same period private cars of the Maine Central were moved only 2,028 miles over other lines.

There is also an extensive use of private cars by short lines, industrial roads, and lines owned, controlled, or used in the interest of some particular business. The mileage of private cars used by the latter lines is largely on foreign lines, and in numerous instances the home stations of the cars and the movements thereof are so far removed from the vicinity of the owning road that it is difficult to conceive the circumstances under which such movements could have been in the interest of or connected with the operation of the road owning the car. For example, the private cars of the Interstate Railroad made 4,296 miles on home lines and 21,544 miles on foreign lines; the cars of the Louisiana & Pacific made 167 miles on home lines and 61,046 miles on foreign lines, including travel for the account of the Longview, Portland & Northern; the cars of the Midland Terminal made 113 miles on home lines and 19,027 miles on foreign lines; the cars of the Minneapolis, Northfield & Southern made 160 miles on home lines and 15,058 miles on foreign lines; and the cars of Piedmont & Northern made 2,000 miles on home lines and 73,888 miles on foreign lines.

As a further illustration, attention is called to the situation disclosed with respect to the Louisiana & Pacific. This was one of three sawmill roads which composed the so-called Shreveport, Alexandria & Southwestern system, 91 miles in extent. The roads were owned and operated as subsidiary companies by the Long Bell Lumber Corporation, which has mills and plants in various sections of the country. According to Poor's and Moody's Manuals the following Long Bell Corporation officials are also officers of the subsidiary railways: Chairman, president, two vice presidents, and the secretary and comptroller. The carriers' replies to questions 2 and 3 of the questionnaire are reproduced in order to show clearly the cars and assignments:

Question 2. Statement of business, official, or other private passenger-train cars owned or leased and transported free or at less than published tariff rates during the years 1923, 1924, and 1925.

Car		If assigned, to whom
Initial	Number or name	
L. & P. Ry. Co.	Kymokan	Unassigned. These cars were owned by Louisiana & Pacific Railway Company which, with the Sibley, Lake Bisteneau & Southern Railway Company and the Woodworth & Louisiana Central Railway Company comprise the "Shreveport, Alexandria & Southwestern Railway System." The cars were used jointly by general officers of these system lines and also by general officers of the Mississippi Eastern Ry. Co. and Longview, Portland & Northern Railway Company, some of whose officers and directors are also officers and directors of the "Shreveport, Alexandria & Southwestern Railway System" lines.
L. & P. Ry. Co.	100 (Previously Kymokan sold May 8, 1924.)	
L. & P. Ry. Co.	101 (Acquired from L. P. & N. Ry. Co. July 15, 1924.)	

Question 3. Home cars on home railroad.

None. Headquarters of car located off line. Explanation: The business car of these lines is held at Kansas City, Mo., at which point are located the general offices of respondent.

These cars with home station at Kansas City, Mo., the headquarters of the Long Bell Corporation, made 167 miles on home lines and 61,046 miles on foreign lines, while these roads were used for a total of 60 miles by private cars of foreign lines. Most of the trips were made between Kansas City and Longview, Wash. There were several so-called inspection tours which embraced Mississippi, Louisiana, and Texas destinations. The home-line mileage on these trips ranged from 5 to 88 miles and the foreign-line mileage ranged from 2,500 to 2,559 miles. A list of ticket passengers on the trips of this system's cars, together with the advantages accruing to the families of the officials, indicates the real purpose of the cars. Included among the ticket passengers are the following Long Bell Lumber Corporation officials and employees:

Vice president.
Secretary to vice president.
Assistant to vice president.
General manager of Longview farm and wife.
Sales manager of sash and door department.
Manager of mercantile department.
Mill manager.
Second secretary to vice president.
Superintendent of construction.
Third secretary to vice president.
Clerk in mercantile department.
Treasurer and wife.
Architect.
Landscape architect.
Advertising manager.
Chief clerk.
Mill superintendent.

The returns show 65 passages on passes and 55 on tickets. Various members of the families of officials, including maids and valets, comprise a large portion of the travelers on both pass and ticket transportation. A statement of the movements of Louisiana & Pacific private cars on the Union Pacific was taken from the latter's return and is included as Appendix F.

The returns with respect to the Nevada Northern also illustrate how a small road with several private cars and with important noncarrier interests makes use of the private car. This road according to Poor's and Moody's Manuals operates 165 miles of broad-gage line in Nevada. The road is owned by the Nevada Consolidated Copper Company, which is controlled by the Utah Copper Company, which in turn is controlled by the Kennecott Copper Corporation. The same interests own or control the Copper River & Northwestern Railway in Alaska. Officers and directors of the Nevada Northern are officers or directors in one or more of the related corporations, namely: Copper River & Northwestern Railway, Nevada Consolidated Copper Company, Utah Copper Company, and Kennecott Copper Corpora-

tion. The return of the Nevada Northern shows that the road owns two private cars; one, the N. N. 101, has headquarters on the line at East Ely, Nev., while the other car, N. N. 100, is identified in the returns as follows: "Note: Home station of Nevada Northern 100 is Jersey City, N. J. (Erie Railroad)." This car was used extensively by the president of the Nevada Northern and by the president and vice president of the Copper River & Northwestern. A third car, which was moved extensively on the account of the Nevada Northern, is the car "Cyprus," which, according to the return, is owned by a vice president of that railway. The extent of the travel of cars charged to the Nevada Northern on the Western Pacific, Southern Pacific, and Union Pacific is shown in Appendix G.

The return shows that in most instances the owner of the "Cyprus" traveled as vice president of the Nevada Northern, but at other times he traveled as an official of the Bingham & Garfield. The return of the Ray & Gila Valley in referring to movements of the same official's car, "Cyprus," stated: "We have kept no record of the movements of * * * car on own line and were, therefore, delayed since receipt of your second request in searching out the dates of his semi-annual visits to the property in Arizona." This return also showed with respect to occupation that the official referred to "is the president and active executive in charge of operations of the Jackling-Hayden-Stone group of copper mines and subsidiary railways."

The returns show that a substantial portion of the total mileage of private cars, especially on foreign lines, was what is commonly referred to as "deadhead" mileage, that is, the cars were not occupied, except in some instances by an attendant. The purpose of such movements is to return the cars to their home stations or to move them to stations where they are to be occupied. On the Baltimore & Ohio and the Michigan Central approximately 3 per cent of the total mileage of foreign private cars was deadhead. On the Cleveland, Cincinnati, Chicago & St. Louis the percentage was 4, on the Santa Fe it was 5, on the Boston & Maine over 9, on the New York Central over 11, on the Richmond, Fredericksburg & Potomac over 12, and on the Atlantic Coast Line over 16.

The returns show numerous instances where private cars were deadheaded to and from off-line shops without charge. Also worthy of consideration is the matter of free switching service and free storage for private cars. A large number of the private cars covered by the returns are held at off-line stations when not in use. Many are so held at New York and the returns indicate that the matter of storage and switching of these cars is of considerable importance from the standpoint of operating expenditures.

In numerous cases cars were rented from the Pullman Company by officers of carriers, and such cars were moved without charge by the carriers. The movements of Pullman private cars occupied by railway officials and others over the Union Pacific and New York Central are summarized in Appendix H.

Numerous instances are shown where private cars of the carriers were loaned to officers of other carriers. As an illustration, Missouri Pacific car No. 1 was loaned on May 15, 1925, to the chairman of the board of the Manufacturers Railway for a trip from St. Louis to Louisville. The returns show that this official used a pass and that he was accompanied by seven persons holding tickets. Union Pacific car 101 was used for a trip from New York to Colorado Springs, Colo., during July and August, 1923, and was occupied by the widow and daughter of a former director, holding passes, and by five other persons holding tickets.

Many private cars which were transported free, or at less than tariff rates, are of private ownership as distinguished from carrier ownership. For example, Union Pacific car No. 1900 is owned by the widow of a former chairman of the board of one of the western carriers. Attention is called to the movement of this car during the period from July 16 to September 5, 1923, as indicated below:

July 16, 1923.	Ogden, Utah, to Oakland Pier, Calif	---
July 16, 1923.	Oakland to San Francisco, Calif	Deadhead
July 17, 1923.	San Francisco to Santa Barbara, Calif	---
July 30, 1923.	Santa Barbara to Los Angeles, Calif	Deadhead
July 31, 1923.	Los Angeles to Santa Barbara, Calif	Deadhead
Aug. 14, 1923.	Santa Barbara to Los Angeles, Calif	---
Aug. 15, 1923.	Los Angeles to Santa Barbara, Calif	---
Aug. 29, 1923.	Santa Barbara to Los Angeles, Calif	---
Aug. 29, 1923.	Los Angeles to Santa Barbara, Calif	Deadhead
Sept. 1, 1923.	Santa Barbara to San Francisco, Calif	---
Sept. 1, 1923.	San Francisco to Oakland Pier, Calif	Deadhead
Sept. 5, 1923.	Oakland Pier, Calif., to Ogden, Utah	---

The private cars of railroad officials are intended to be offices on wheels for those whose duties require considerable travel over the line and when used for that purpose are an important facility for carrying on the business of the road. It is seldom, however, that these duties necessitate a movement of the car over other lines. In some cases such a movement may be justified for business reasons; for example, where it avoids a very circuitous haul over the home line. But the returns to our questionnaire indicate that private cars are often used for other than business purposes by railroad officers, their relatives, and friends. Moreover, they appear to be used in some instances for the benefit of an industry which controls the railroad. In other instances, their use in entertaining shippers may be for the purpose of obtaining business for the railroad. These

and other abuses are apparent from the returns, but we are here concerned primarily with the legality of the free transportation of the private cars of other carriers. We will, therefore, proceed to a consideration of the law applicable to the subject.

A passenger-train car is property. The provisions of the interstate commerce act relating to free transportation of passengers and property are contained in sections 1 and 22. In *American Express Co.* v. *United States*, 212 U. S. 522, the Supreme Court considered the question of whether common carriers could lawfully issue any—

> frank or other documents for the free transportation of property to the following persons, to-wit: The officers, agents, attorneys, and employees of said defendant and their respective families; the officers and employees of other express companies and their respective families; the officers and employees of any railroad or any other common carrier subject to the act to regulate commerce and its amendments, and their respective families.

An injunction had been issued by the lower court restraining the issuance of such franks and from transporting or forwarding for the persons above named, without demanding and receiving the lawful rate of payment therefor, any shipments of property subject to the provisions of the interstate commerce act and its amendments.

It was contended in that case that the custom of the express companies to issue such franks was one of long standing and presumably known to Congress; and that there was no record of any protest against it to or by this commission, or to Congress, nor any suggestion in any speech or report that it was supposed to be detrimental to the public interest, or that it was intended to be prohibited. On the other hand, it was contended for the United States that the only section of the interstate commerce act which relates to the carriage of property free or at reduced rates is section 22, and that there is nothing in it which by any possible construction can be taken as covering the granting or interchanging of franks, applying to the transportation of property by the express companies.

In disposing of the case and in affirming the decrees of the lower court the Supreme Court said:

> We are clearly of the opinion that, without doing violence to the language used in section one—including the proviso—its terms can not be held to include the transportation of goods.

The question was again presented in *Legality of Express Franks*, 50 I. C. C. 599, 603. There we said:

> The free carriage either of persons or of property is contrary to the general principles to be found in the act to regulate commerce, as amended. See sections 2, 3, and 6. The same principle is asserted even more strongly in the legislation accompanying the act itself and which was enacted in aid of its enforcement and for the punishment of those who offend its provisions. Any free carriage of passengers that is now lawful is authorized in the form of exceptions to the general

principle to be found in the so-called antipass provision of section 1 of the act. Any free carriage of property that is lawful is to be found in the exceptions noted in section 22 of the act. While the free carriage of certain of the excepted classes of passengers has thus been authorized even when traveling for pleasure or for their personal benefit, the spirit of the whole act forbids the free carriage of property except where public interests are involved under the conditions specified in section 22.

This decision was reaffirmed in *Legality of Express Franks*, 69 I. C. C. 627, decided July 10, 1922. The findings as to express companies in these respects are applicable to other carriers.

Any free carriage of property that is lawful is to be found in the exceptions noted in section 22 of the act. Compare *Int. Com. Com.* v. *Balt. & Ohio R. R.*, 225 U. S. 326; *Arizona Rates, Fares and Charges*, 61 I. C. C. 572; *Pacific Engineering & Construction Co.* v. *C., R. I. & P. Ry. Co.*, 56 I. C. C. 247. Section 22 provides in part that:

* * * Nothing in this Act shall prevent the carriage, storage, or handling of property free or at reduced rates, for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat. * * *. Nothing in this Act shall prevent any carrier or carriers subject to this Act from giving reduced rates for the transportation of property to or from any section of the country with the object of providing relief in case of earthquake, flood, fire, famine, drought, epidemic, pestilence, or other calamitous visitation or disaster, if such reduced rates have first been authorized by order of the commission (with or without a hearing); but in any such order the commission shall define such section and shall specify the period during which such reduced rates are to remain in effect.

The principal opposition to the proposed report came from the Association of Railway Executives. It is argued on behalf of this association that the free carriage of railway officials and employees authorized by the act includes a private car of another line occupied by one or more of them. In support thereof it is urged that such free carriage is universally recognized as not confined to the persons but includes their baggage, although baggage is property and the act does not specifically authorize its free transportation.

Baggage is usually transported without charge in addition to the passenger's fare, subject to certain restrictions as to weight and other matters. It is obvious that a person can not travel without certain property, such as clothing, and the transportation of this property is merely incidental to the transportation of the passenger. While the transportation of baggage may be spoken of as free, it is in reality covered by the passenger's fare. The property which may thus be transported without separate charge is defined in the tariffs, and when the weight permitted is exceeded separate charges are provided. Naturally, a person traveling on a pass is generally accorded the same baggage privileges as other passengers, and apparently he would have to pay the same charges as others on excess weight. There are other

limitations on the property which may be transported as baggage without separate charge; for example, such charges are often provided on bicycles and baby carriages. Recently certain carriers have provided for the checking of automobiles in baggage service at stated charges, which would apparently have to be paid whether the passenger is traveling on a pass or ticket. Such charges for the checking of certain articles are no doubt made because most passengers do not travel with these articles, and they are not considered ordinary or necessary baggage. In other words, their transportation is not such an ordinary and necessary incident to the transportation of the passenger as to require or warrant their transportation without additional charge. While the transportation of a private car may be in a sense incidental to the transportation of the persons riding therein, the use of such cars is certainly not so general that they may be considered an ordinary or necessary incident to the transportation of the passengers, as in the case of baggage. It seems clear from the foregoing that the free transportation of a private car can not be justified upon the same principle as the transportation of baggage.

As a matter of fact, the baggage tariffs specifically prohibit the checking of numerous articles which are commonly included in private cars, such as chinaware, foodstuffs, and furniture. Not only that but such articles beyond question would be subject to charges if shipped by freight or express. It is strange indeed if a railroad official is entitled to have articles transported free in a private car which could not be checked and would be subject to charges if shipped in any other manner. Surely if a person riding on a pass must pay to check a bicycle or automobile, the principle of free baggage can hardly be invoked in favor of a private car. A person riding on a pass is not entitled to have anything transported free which is not covered by the fare paid by any other passenger.

In our view it is too far-fetched to say that because a person lawfully entitled to use a pass may have transported free a limited amount of baggage he may also bring and have transported free a private car embracing a kitchen, dining room, stateroom, sitting room, and necessary equipment, supplies, and attendants. According to the views advanced on behalf of the railway executives the family, relatives, and friends of the official or employee in charge of the private car being transported free may without objection likewise be accommodated therein. And when the car is no longer needed it may, under their interpretation, be sent over foreign lines to its home station without charge, or if the car is at its home station and is desired elsewhere on foreign lines for use it may be brought without expense. Free transportation is contrary to the general policy of the act and the definiteness and clarity with which Congress has specified the

extent to which free transportation may be afforded by carriers subject to the act precludes the construction which counsel would have us place upon the pass provisions thereof.

The argument of the Association of Railway Executives that the carriers may lawfully haul the private cars of other lines without charge is also predicated on the theory that such a car is an instrumentality of commerce rather than an article of commerce. We are thus brought to a consideration of the question of when railway equipment generally may be transported without charge. Of course, a carrier may transport its own property without the payment of tariff charges. It would serve no useful purpose to require a carrier to transfer money from one pocket to another in payment of charges. Likewise, property which a carrier has hired or rented for the performance of its common-carrier duties may be transported the same as property which it owns. It is well known that freight cars and to some extent passenger cars move freely over foreign lines, and it may be helpful to consider the terms on which such cars are handled.

Freight cars in service are generally interchanged between the principal carriers throughout the country under rules of the American Railway Association. The carrier in possession of the car pays the owning line a certain amount for each day the car is on its line. This is referred to as per diem and is in the nature of rent for the use of the car. It is paid whether the car is loaded or empty, as the empty movement is considered incidental to the loaded movement, and the carrier in possession may permit an empty car to be loaded with revenue freight. This use of the freight cars of another carrier relieves the carrier in possession of the burden of furnishing its own equipment, which is a distinct benefit, and it participates in the revenue from the freight. Freight cars in regular service are not subject to transportation charges but such cars are subject to charges when the transportation is not in regular service. The consolidated classification provides certain charges per car per mile for the transportation of all kinds of railway equipment on their own wheels. For example, dining, parlor, and sleeping cars are charged from 23 to 30 cents per mile in the various territories. These charges apply on new cars moving from the place of manufacture to the home line before being placed in service, also on cars moving empty to and from repair shops off the home line, and on any other movements over foreign lines not in regular service. Apparently a car is in service when it is under load or has carried a load and is returning or seeking another load. In other words, so long as a car is being handled for revenue purposes, it is in service and not subject to charges; but when it is transported solely for the benefit of the owning line, the latter must pay for such transportation on another line.

Privately owned freight cars are also used by the carriers in transporting property of the owners. An allowance of so much per mile is paid by the carrier to the owner for the use of the car. This is based on the empty as well as the loaded movement, but if the empty movement exceeds the loaded movement the mileage allowance on the excess must be refunded, and in addition charges are assessed for the transportation of the car. Otherwise, no charge is made for the handling of a privately owned car in service, as its use benefits the carrier and is for revenue purposes. The charges in the consolidated classification for the transportation of cars not in service apply to privately owned as well as carrier equipment, no distinction being made because of private or carrier ownership.

Passenger cars of one carrier are sometimes operated over the lines of other carriers in maintaining through service. The terms on which this is done are a matter of contract, but in the absence of other arrangement the owning line is paid certain amounts per mile or per diem under rules of the American Railway Association. As in the case of freight cars, no charges are assessed for the handling of cars in service, but cars not in service are subject to the charges in the consolidated classification. The criterion for determining when a passenger car is in service would seem to be the same as in the case of a freight car; that is, whether the car is being handled for revenue purposes in the interest of all the carriers in the through route or solely for the benefit of the owning line.

Special, privately owned, or chartered cars for the exclusive use of special parties are transported in passenger trains under tariffs which provide for certain minimum revenues. In the case of sleeping and parlor cars, charges for a one-way movement are based on the authorized fare for each passenger, with a minimum of 25 adult fares, but not less than $42 for the car and party. The charges for a round-trip movement are similar, except the 25 fares are doubled or must be for the round trip, and the minimum revenue is $84. In either case, the surcharge must be paid for each passenger, with a minimum of 25 surcharges, but this is not used in computing the minimum revenue per car. When a car is moved empty or in charge of porter or other attendants, charges are assessed on the basis of 10 regular adult one-way fares, plus the authorized fare for each porter or attendant, except not more than three employees of common carriers may be carried free. In this case also the minimum revenue is $42, including fares of attendants, but the surcharge is not collected. In some of the tariffs the charges for empty movements apply to carrier-owned as well as privately owned equipment. The tariffs also provide for application of the minimum fares and revenue on carrier-owned cars equipped for certain special purposes, such as advertising,

exhibition, instruction, and the like. These are the provisions generally in effect, although there may be variations on individual lines.

The term privately owned cars is not defined in the tariffs, but its obvious meaning is cars owned by others than the carriers. Apparently a private car owned by an individual even though a railroad official would be subject to the tariff charges on privately owned cars. It would seem that if a railroad official must pay to have his own car moved, the free transportation of his person authorized by the act could hardly be deemed to include a private car owned by his company.

It will be seen from the foregoing that tariff charges are provided for the transportation in freight trains of both carrier and privately owned cars of all kinds, when they are handled solely for the benefit of the owner and not for revenue purposes. It would not be seriously urged that such transportation could be rendered free if an attendant or other person having a pass should ride in the car. The tariffs also provide minimum charges for the transportation in passenger trains of special, privately owned, or chartered cars for the exclusive use of special parties. Apparently these minimum charges would not be lessened or affected in any way if a person or persons having passes should ride in the car. All of these charges show that there is nothing in the nature of railway equipment which justifies its transportation without charge, except when it is being handled for revenue purposes in the interest of the carrier performing the service. Even then the revenue from a passenger car used exclusively by a special party must be sufficient to warrant its transportation.

The propriety of tariff charges for the movement of railway equipment on its own wheels has been recognized by us in numerous cases. In two of them in fact we found that the charges assessed on freight cars were applicable even though they were transported under load. *Pacific Engineering & Construction Co.* v. *C., R. I. & P. Ry. Co., supra; McCloud River Ry. Co.* v. *S. P. Co.*, 56 I. C. C. 287. Although charges are not generally assessed on cars under load, the charges assailed in the cases cited were upheld on the ground that the carriers had never agreed to accept the cars in interchange service. It was recognized that loaded cars are presumed to have been accepted in interchange service, but this presumption was found to have been overcome under the circumstances of these cases. Stated in another way, the charges were found applicable because the carriers had not hired the cars and they did not pay the usual mileage allowance for their use. In a more recent case we found that the charges assessed on certain cars hauled under load were not applicable because the cars had been accepted in interchange service and the mileage allowance was paid for their use. *Haffner Thrall Car Co.* v. *N. P. Ry. Co.*, 146 I. C. C. 47. The theory underlying these decisions is that a carrier may not assess

charges on a car which it has hired the use of, but it may and should assess charges when it has not hired the use of the car even though it is hauled under load.

The transportation of a private car of another carrier is ordinarily for the benefit of the owning line or its officials and not for revenue purposes. While ticket passengers may sometimes occupy such a car, they do so by invitation, and the carrier performing the transportation is not at liberty to make use of the car by putting other passengers in it. The returns to our questionnaire indicate that it is seldom, if ever, that the number of ticket passengers is sufficient to make the hauling of the private car of another carrier profitable to the carrier performing the service. This is further indicated by the additional fact that such passengers apparently do not pay the surcharge, which is assessed on persons riding in Pullman and privately owned or chartered cars. Indeed, the few ticket passengers sometimes riding in the private car of another carrier could probably be accommodated in other equipment that must be hauled anyhow, and the transporting carrier would receive more revenue if they rode in an ordinary Pullman car. Under these circumstances a carrier hauling the private car of another line can not be said to have hired its use, as it would have no interest in doing so and pays no rental therefor. Even if car hire should be provided on private cars, it would obviously be a mere subterfuge which could not change the legality of the practice. Our conclusion is that the transportation of the private car of another carrier is not of such advantage to the carrier performing the service as to warrant its performance without charge, on the same principle as the free handling of revenue-producing equipment.

The Association of Railway Executives asserts that the carriers have always hauled the private cars of other lines without charge, that this practice has been well known to the commission, and that we have expressly approved it. It is contended, therefore, that we have interpreted the act as permitting the practice, and cases are cited to the effect that such an administrative interpretation is entitled to considerable weight where it is long continued and uniform.

In support of this contention it is pointed out that our conference ruling No. 95 and our pass regulations of 1917 both prescribed a form of pass for railway officials and employees which included the word "car." Of course, such a pass would be proper for the movement of a home-line private car, and it is understood that the practice is to issue passes for such cars, at least on some lines. But the Association of Railway Executives urges that the form of pass prescribed applied to foreign-line cars, since it provided for naming the carrier, which was not required in the case of a pass for the officers or employees of

the home line. The form of pass does not specifically indicate whether it is for home or foreign-line cars or both. It might in fact be construed as including any kind of a car, even though subject to tariff charges. Under these circumstances we think that the pass form should be given a construction in harmony with the law. Certainly we never intended to approve the practice of issuing passes for the private cars of other lines. However, our conference rulings have all been canceled, and our pass regulations will be amended so as to make clear that a car pass may be issued only for home-line cars.

It is also argued that where our pass regulations refer to passes for sleeping, parlor, *and other accommodations*, the words in italic include a private car of another line. We think those words were meant to cover such similar accommodations as a stateroom or berth on a steamer. A private car of another line can not be regarded as an accommodation furnished by the carrier issuing the pass. We do not see how the words in question can be given the construction sought.

Our attention is not directed to any decision of a formal or informal nature in which we have approved the practice of handling private cars of other lines without charge, and diligent search has failed to disclose any such decision. In two cases we referred to the use of "car and party" passes by officers of so-called tap lines or industrial lines as being improper and unlawful. *The Tap Line Case*, 23 I. C. C. 277, 298; *Colorado Free Pass Investigation*, 26 I. C. C. 491, 494. The only other case in which any consideration has heretofore been given to the free transportation of private cars was *The Five Per Cent case*, 31 I. C. C. 351. At page 410 of that report we referred to revenue which the carriers might have derived by charging tariff rates on private cars handled free. In effect we told the carriers that they should look to this among other means of increasing their revenues, but apparently they have not heeded our recommendation. The lawfulness of the practice was not brought in issue and was not passed upon in that proceeding. Clearly we have never ruled that private cars may lawfully be transported without charge for other carriers or their officials.

It may be assumed that the practice of hauling the private cars of other lines without charge prevailed at the time of the passage of the act to regulate commerce. That, however, does not indicate an intention on the part of Congress to permit the practice, since, as stated in our third annual report, the law aimed at the correction of the abuses of free transportation. Nor can the long existence of the practice of issuing passes for foreign-line private cars be regarded as legalizing it. As previously stated, in *American Express Co.* v. *United States*, *supra*, the Supreme Court held that an express company

could not lawfully issue franks to certain classes of persons for the transportation of property, notwithstanding the contention that the custom of issuing such franks was one of long standing and no protest against the practice had been made to or by the commission. This is the first time that the lawfulness of the practice of issuing passes for foreign-line private cars has been brought in issue before us. Of course, good faith might be urged in defense of past violations, but obviously it could not be so urged in respect of a violation after the law has been construed by this commission.

It is urged that while the practice of transporting foreign-line private cars without charge is lawful our investigation has shown that the courtesy extended as between roads has in some instances been abused. It is proposed to correct such abuses by the adoption of a code of ethics limiting such courtesies and calling for reports to be rendered covering the movement of private cars on foreign lines. Counsel stresses the point that although the practice of transporting private cars without charge is of long standing we have not declared it unlawful. As previously stated, this is the first time the legality of the practice has been before us for decision. Apparently it is the first time the practice has been given serious consideration by the Association of Railway Executives since only after our investigation were the abuses of what they term a lawful courtesy discovered. There is no more reason for construing our failure to declare the practice unlawful as approving the practice, than there is for construing the failure of the executives to correct the long-existing abuses as approving them. After observing our finding that the transportation of private cars over foreign lines should be paid for through the assessment of a just and reasonable charge the executives will still have a duty to perform in eliminating unnecessary use of private cars and in thereby promoting efficient and economical management as contemplated by the act.

The Chicago & Eastern Illinois was the only carrier which filed exceptions to the proposed report. It urges that the assessment of charges for the movement of private cars over foreign lines would handicap it in the solicitation of traffic in the Southeast and Southwest. This line is a part of through routes to and from points in those territories which it can reach only over the rails of its connections, while certain competitors such as the Illinois Central and the Santa Fe extend all the way to many of the important southeastern or southwestern points. Apparently the Chicago & Eastern Illinois has been sending its private cars over the lines of its competitors as well as other carriers for the purpose of soliciting traffic in their territory. It is not clear why the use of private cars is so important in the solicitation of traffic, which is ordinarily handled by traffic

representatives, such as this line has at various points in the Southeast and Southwest. During the three years covered by our questionnaire, the private cars of the Chicago & Eastern Illinois traveled 28,274 miles on foreign lines, while it hauled the private cars of other carriers 44,223 miles. The assessment of reasonable charges for such movements would, therefore, have been to the advantage of this carrier.

Reciprocity between carriers is no justification for the free transportation of private cars. It will be observed that railway equipment generally which is not in revenue service is not handled on that principle, and it could not be so handled lawfully. Moreover, the returns to our questionnaire show that there is seldom a fair balance between the service performed by different carriers in transporting the private cars of each other. On the contrary, the returns show that there is often a wide difference in the relative amount of service performed in hauling such cars. No one has contended that the theory of reciprocity warrants the free handling of private cars. Transportation must be paid for in cash and not in commodities or services. *In re Contracts for Free Transportation*, 16 I. C. C. 246; *United States* v. *C. I. & L. Ry. Co.*, 163 Fed. 114; *Louisville & Nashville R. R. Co.* v. *Mottley*, 219 U. S. 270.

As heretofore pointed out, the tariffs provide certain minimum fares and revenues for the movement of special, privately owned, or chartered cars, which are evidently intended to cover the service of transporting the car. This is apparent from the fact that the charges are the same whether the car is occupied by 1 passenger or 25. Especially in the case of cars moving empty or in charge of porter, it is manifest that the minimum fares and revenue are intended to compensate for the movement of the car rather than its contents. Apparently the only material difference between the cars on which these minimum charges apply and the private cars of other carriers is the matter of who owns or is using them. In so far as these charges do not apply to the private cars of other carriers, they are unjustly discriminatory and unduly preferential and prejudicial. See *In the Matter of Restricted Rates*, 20 I. C. C. 426, wherein it was found in violation of sections 2 and 3 to charge less for the transportation of railway coal than the rates charged on commercial coal. This decision was upheld by the Supreme Court in *Int. Com. Com.* v. *Balt. & Ohio R. R.*, *supra*.

We find that the transportation or movement of private passenger cars, including so-called office cars, by one carrier for another or its officials, free or at other than published tariff rates is contrary to the provisions of the interstate commerce act. The assessment of a just and reasonable charge by carriers transporting private cars for others, and for services rendered in connection therewith, is not

only required by the act but will be in keeping with efficient and economical management.

This finding does not extend to the point of saying that it is unlawful for private cars of one carrier to be transported over the lines of other carriers, but is confined to the assertion that under existing law the transportation of private cars on foreign lines should be paid for through the assessment of a just and reasonable charge.

As shown in Appendix A, a substantial percentage of the occupants of private cars hauled free, or at less than tariff rates, were business associates, relatives, or friends holding tickets which entitled them only to transportation in the ordinary coach. A total of 22,391 passenger-miles were traveled by such persons in private cars of the Nickel Plate and a total of 208,203 passenger-miles were traveled by such persons in private cars of the Chicago, Rock Island & Pacific during the three-year period. The returns of other carriers show similar travel.

Carriers according passengers the comforts and facilities of private cars, including berth and other accommodations, are treating unequally and unfairly the passengers accorded the ordinary coach facilities but who are charged at the same rate as those traveling in private cars, and they also discriminate against those who pay the surcharge for riding in ordinary sleeping or parlor cars and privately owned or chartered cars.

It is provided in section 2 of the act:

> That if any common carrier subject to the provisions of this Act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property or the transmission of intelligence, subject to the provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation or transmission of a like kind of traffic or message under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

It is also provided in paragraph 1 of section 3 of the act:

> That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

The Association of Railway Executives urges that the question of whether it is unjustly discriminatory and unduly prejudicial to furnish private-car accommodations to invited guests without charge

depends upon the circumstances of each individual case. They seem to think that circumstances may warrant the furnishing of a berth and other accommodations in a private car without charge, provided only that the passenger has purchased a ticket entitling him to passage. We are unable to see how a berth or other accommodations for which a tariff charge is usually made can be furnished free any more than a passenger can be carried without charge. A carrier which furnishes free a berth or other accommodations in a private car similar to those for which tariff charges would be assessed if the passenger rode in a Pullman car is clearly guilty of violating section 6 of the act.

It is suggested that the furnishing of a berth or other accommodations in a private car is merely a courtesy extended by one passenger to another. The furnishing of a berth or other accommodations in a Pullman or private car without charge to a person not lawfully entitled to free transportation is just as clear a violation of the spirit and plain intent of the act as carriage without the purchase of a coach ticket.

The railway executives further urge that a hearing must be held in each individual case to determine whether the circumstances and conditions are so similar as to warrant an order requiring the removal of the discrimination and prejudice. This argument sounds like that made by the carriers soon after the passage of the act to regulate commerce. It was contended then that a difference in circumstances and conditions warranted the issuance of passes to certain classes of persons, such as public officials. That contention was rejected in *In Re Persons Free or at Reduced Rates by B. & M. R. R. Co.*, 5 I. C. C. 69, 78; and *William H. Harvey* v. *Louisville & Nashville R. R. Co.*, 5 I. C. C. 15.

One of the fundamental purposes of the act is "to compel the carrier as a public agent to give equal terms to all" and "to cut up by the roots every form of discrimination, favoritism, and inequality." *New Haven R. R.* v. *I. C. C.*, 200 U. S. 361; *L. & N.* v. *Mottley*, 219 U. S. 467; *U. S.* v. *Union Stock Yard*, 226 U. S. 286.

We further find that the transportation of persons in private passenger cars, including berth and other accommodations for which a charge is made in Pullman cars, at the rate charged passengers provided only with ordinary coach accommodations is unjustly discriminatory, unduly preferential of the former, and unduly prejudicial to the latter as well as those who pay the surcharge for riding in ordinary sleeping or parlor cars and privately owned or chartered cars.

The carriers will be expected to cease and desist from the violations of the act herein found, but in view of the penalties provided for such violations, no order appears to be necessary.

BRAINERD, *Commissioner*, dissenting in part:

The majority's decision is based upon information obtained by the commission from returns made to a questionnaire sent to Class I and II carriers. No hearing has been held and no opportunity for the introduction of evidence or the examination or cross-examination of witnesses has been granted. This report is adopted over the carriers' exceptions based in part upon a failure to accord them a full hearing. While I concur in much if not all that is said by the majority, I do not wish to be understood as approving the practice of adopting formal reports containing findings of fact or conclusions of law based upon an investigation, whether upon our own motion or otherwise, without having first held a hearing at which all parties have been afforded an opportunity to introduce evidence and examine and cross-examine witnesses in such manner as may be necessary to conform to the requirements of due process of law. The more liberal the practice, the more imperative the obligation to preserve the essential rules by which rights are determined.

I am authorized to state that COMMISSIONERS WOODLOCK and PORTER concur in the views herein expressed.

APPENDIX A

Recapitulation

	Number of private cars	Home cars on home railroad				Home cars on home and foreign railroads				Foreign cars on home railroad					
		Trips	Occupants	Transportation		Trips	Occupants	Transportation		Trips	Occupants	Transportation		Cost of commissary and other supply items furnished while on own line	
				Pass	Ticket			Pass	Ticket			Pass	Ticket	Absorbed by own line	Absorbed by occupant or foreign railroad
Class I roads:															
Year 1923	817	18,003	40,372	39,014	1,358	3,208	8,150	7,409	741	8,212	17,482	15,859	1,623	$2,857.66	$19,979.46
Year 1924	840	18,658	41,376	39,833	1,543	3,707	9,052	8,026	1,026	8,931	19,408	17,572	1,836	3,836.19	17,000.99
Year 1925	816	19,460	44,648	42,680	1,968	3,891	10,388	9,324	1,064	9,906	21,344	19,042	2,302	3,054.74	19,350.33
Total, Class I roads	.....	56,121	126,396	121,527	4,869	10,806	27,590	24,759	2,831	27,049	58,234	52,473	5,761	9,748.59	56,330.78
Class II roads:															
Year 1923	44	174	341	320	21	111	251	221	30	141	352	309	43	22.50	15.84
Year 1924	41	184	335	321	14	128	329	291	38	167	451	417	34	16.00	84.09
Year 1925	445	162	308	308	.....	126	292	265	27	295	463	431	32	31.25	6.48
Total, Class II roads	.....	520	984	949	35	365	872	777	95	513	1,266	1,157	109	69.75	106.41
Switching and terminal roads:															
Year 1923	4	2	2	2	.....	12	37	37	.....	333	439	432	7	833.32	3,567.91
Year 1924	4	3	32	32	.....	14	38	38	.....	439	685	657	28	472.49	3,448.96
Year 1925	4	3	47	47	.....	12	30	30	.....	390	459	459	.....	408.39	3,263.59
Total, switching and terminal roads	.....	8	81	81	.....	38	105	105	.....	1,162	1,583	1,548	35	1,714.20	10,280.46
Yearly totals:															
Year 1923	.....	18,179	40,715	39,336	1,379	3,331	8,438	7,667	771	8,686	18,273	16,600	1,673	3,713.48	23,563.21
Year 1924	.....	18,845	41,743	40,186	1,557	3,849	9,419	8,355	1,064	9,537	20,544	18,646	1,898	4,324.68	20,534.04
Year 1925	.....	19,625	45,003	43,035	1,968	4,029	10,710	9,619	1,091	10,591	22,266	19,932	2,334	3,494.38	22,620.40
Grand total (3 years)	.....	56,649	127,461	122,557	4,904	11,209	28,567	25,641	2,926	28,724	61,083	55,178	5,905	11,532.54	66,717.65

NOTE.—The apparent discrepancies between the number of trips and occupants as shown under the heading, "Home cars on home and foreign railroads" and the column headed "Foreign cars on home railroads" is due (*a*) to differences in methods of keeping records and reporting; (*b*) the fact that the owning road made one report covering trips including several foreign lines (each handling line making a separate report), and (*c*) the trips of private cars of the American Railway Express, Western Union, Pullman Company officials, and small roads which were not included in the order and did not file returns.

APPENDIX B

Statement showing, for 3-year period, the mileage made by private passenger-train cars on lines of carriers listed below

The column "Home cars on home roads" contains the home-line portion of trips made on home and foreign lines. The asterisk (*) indicates roads whose private-car mileage on foreign lines exceeded the mileage on the home line and whose foreign-line mileage was greater than the mileage furnished foreign-line private cars.

Name of railroad	Mileage		
	Home cars on home roads	Home cars on foreign roads	Foreign cars on home roads
Class I roads			
Ann Arbor R. R.*	49,439	57,078	4,284
Akron, Canton & Youngstown*	1,621	13,556	105
Atchison, Topeka & Santa Fe			
Gulf, Colorado & Santa Fe	3,583,454	136,902	548,018
Panhandle & Santa Fe			
Atlanta & West Point			
Western Ry. of Alabama	44,279	7,879	18,465
Atlanta, Birmingham & Atlantic	119,471	3,947	1,051
Atlantic Coast Line	735,231	96,507	456,683
Baltimore & Ohio	1,107,107	160,985	247,825
Bangor & Aroostook	73,595	31,053	1,777
Bessemer & Lake Erie	10,876	4,968	469
Bingham & Garfield	1,607	60	41
Boston & Albany	29,898	4,184	34,024
Boston & Maine	57,323	15,701	105,891
Buffalo & Susquehanna	2,119	1,207	
Buffalo, Rochester & Pittsburgh	82,086	35,150	36,507
Canadian National, mileage in United States only	21,919		1,019
Canadian Pacific	47,067	6,010	1,373
Central of Georgia	343,488	62,013	51,362
Central R. R. of N. J.	57,669	11,835	5,520
Central Vermont	58,110	42,508	58,318
Charleston & Western Carolina*	31,315	45,895	4,214
Chesapeake & Ohio	593,054	111,465	169,305
Chicago & Alton	256,129	90,050	43,716
Chicago & Eastern Illinois	71,095	28,274	44,223
Chicago & North Western	700,031	32,063	81,191
Chicago, Burlington & Quincy	2,321,624	336,847	316,703
Chicago Great Western	102,812	40,744	40,936
Chicago, Indianapolis & Louisville	90,591	9,345	40,356
Chicago, Milwaukee & St. Paul	2,003,595	118,013	158,151
Chicago, Rock Island & Pacific	917,857	184,773	246,249
Chicago, Rock Island & Gulf			
Chicago, St. Paul, Minneapolis & Omaha	30,541	18,986	45,061
Cincinnati, Indianapolis & Western	17,603	17,472	3,804
Cleveland, Cincinnati, Chicago & St. Louis			
Cincinnati Northern			
Evansville, Indianapolis & Terre Haute	459,653	147,196	212,911
Peoria & Eastern			
Clinchfield	38,996	7,197	12,153
Columbus & Greenville			552
Colorado & Wyoming*	318	12,873	
Cumberland & Pennsylvania*	349	43,613	
Delaware & Hudson*	110,209	137,378	32,000
Delaware, Lackawanna & Western	123,606	42,614	15,694
Denver & Rio Grande Western	433,106	91,996	97,901
Denver & Salt Lake*	4,132	8,465	478
Detroit & Mackinac	9,313	266	784
Detroit & Toledo Shore Line			450
Detroit, Toledo & Ironton			2,729
Duluth & Iron Range	11,934	10,208	6,894
Duluth, Missabe & Northern*	22,100	36,759	4,875
Duluth, South Shore & Atlantic	48,816	7,024	3,118
Duluth, Winnipeg & Pacific			14,490
Elgin, Joliet & Eastern	1,898	4,921	
Florida East Coast	83,056	68,456	157,129
Fort Smith & Western	25,998	155	
Georgia & Florida*	46,913	53,640	1,755
Georgia R. R.	55,608	1,002	29,720
Grand Trunk Western	78,728	34,779	82,639

Name of railroad	Mileage		
	Home cars on home roads	Home cars on foreign roads	Foreign cars on home roads
Class I roads—Continued			
Erie R. R.			
Chicago & Erie			
New York, Susquehanna & Western	545,759	119,049	108,801
Wilkes-Barre & Eastern			
Northern Railroad of New Jersey			
Great Northern	1,391,500	154,194	165,151
Green Bay & Western			
Kewaunee, Green Bay & Western	5,220		906
Ahnapee & Western			
Gulf & Ship Island			14,087
Gulf Coast Lines	140,284	14,140	107,610
Gulf, Mobile & Northern	132,689	29,961	5,418
Hocking Valley*	15,587	17,389	10,628
Illinois Central	1,299,374	229,770	314,112
Yazoo & Mississippi Valley			
International Great Northern	110,980	72,475	69,136
Kansas City, Mexico & Orient*	46,985	58,039	4,751
Kansas City Southern	284,557	141,640	19,969
Texarkana & Fort Smith			
Kansas, Oklahoma & Gulf	30,298		567
Lake Superior & Ishpeming*	1,250	1,979	484
Lehigh & Hudson	3,800	640	2,343
Lehigh & New England	8,569	2,472	803
Lehigh Valley	199,405	79,263	18,209
Long Island*	32,376	34,034	5,936
Louisiana & Arkansas	73,510	2,640	4,281
Louisiana Ry. & Navigation Co.	5,174	783	5,081
Louisiana Ry. & Navigation Co. of Texas	29,711	2,333	1,102
Louisville & Nashville	499,376	107,440	147,830
Louisville, Henderson & St. Louis	7,818	196	5,178
Maine Central	21,382	2,028	41,321
Michigan Central	435,184	143,797	180,030
Midland Valley	29,502	171	349
Minneapolis & St. Louis	122,928	14,051	8,004
Minneapolis, St. Paul & Sault Ste. Marie	209,859	92,034	80,009
Mississippi Central	19,818	8,572	184
Missouri & North Arkansas	8,111		
Missouri-Kansas-Texas	497,619	149,186	144,286
Missouri-Kansas-Texas of Texas	1,314,808	233,250	190,709
Missouri Pacific	333,388	73,454	16,106
Mobile & Ohio			4,192
Monongahela			132
Montour			
Nashville, Chattanooga & St. Louis	124,087	48,766	35,021
Nevada Northern*	18,400	42,402	1,806
New Orleans Great Northern*	11,365	51,315	1,092
New York Central	1,315,709	313,253	625,639
Ohio Central Lines			
New York, Chicago & St. Louis	378,198	274,814	29,693
New York, New Haven & Hartford	148,670	72,798	106,85
Central New England			
New York, Ontario & Western	36,841	644	5,822
Norfolk & Western	419,429	192,727	146,703
Norfolk Southern	73,711	44,066	6,310
Northern Pacific	1,472,087	154,232	198,678
Northern Pacific	48,135	24,970	2,384
North Western Pacific	2,048,556	367,264	220,473
Pennsylvania	195,627	30,781	30,554
Pere Marquette			
Pittsburgh & Lake Erie*	20,621	65,312	9,901
Youghiogheny Northern			
Lake Erie & Eastern	2,308	416	160
Pittsburg & Shawmut	1,074	16,873	
Pittsburgh & West Virginia*			414
Pittsburg, Shawmut & Northern	53,647	32,992	12,143
Reading System	18,727	53,271	227,312
Richmond, Fredericksburg & Potomac	9,113	29,073	40,139
Rutland			
St. Louis-San Francisco	1,146,602	172,435	129,508
St. Louis-San Francisco Ry. of Texas			
St. Louis Southwestern	593,783	99,165	22,384
St. Louis Southwestern of Texas			
San Antonio, Uvalde & Gulf	39,021	13,972	7,202
Seaboard Air Line	628,940	139,935	175,611
Southern System	2,243,138	308,019	252,539
Southern Pacific	1,901,832	425,064	771,044
Southern Pacific in Texas	625,790	144,582	270,703

[1] No record.

Name of railroad	Mileage		
	Home cars on home roads	Home cars on foreign roads	Foreign cars on home roads
Class I roads—Continued			
Spokane International			4,544
Spokane, Portland & Seattle	82,242	26,704	69,948
Tennessee Central	32,784	1,678	2,651
Texas & Pacific	310,377	81,678	81,088
Toledo, Peoria & Western	5,800	4,541	4,080
Tampa & Gulf Coast			5,005
Trinity & Brazos Valley	40,049	11,819	6,342
Ulster & Delaware			322
Union Pacific			
Oregon-Washington R. R. & Nav. Co.			
Oregon Short Line	3,022,909	281,904	469,155
Los Angeles & Salt Lake			
St. Joseph & Grand Island			
Virginian	71,830	44,523	4,206
Wabash	394,042	128,896	92,958
Western Maryland	21,050	8,154	2,258
Western Pacific	121,399	20,150	46,978
Wheeling & Lake Erie	98,316	58,031	1,417
Class II roads			
Apache Railway			1,008
Ashley, Drew & Northern			41
Arkansas & Louisiana Missouri	711	891	161
Birmingham & Northwestern			797
Birmingham & Southeastern			30
Blue Ridge Railway			83
Brimstone Railway & Canal			13
Butler County Ry.			133
Cambria & Indiana			428
Chesapeake Beach	687		13
Chestnut Ridge			4
Christie & Eastern			22
Cisco & Northeastern			112
Clinton & Oklahoma Western			302
Charlotte Harbor & Northern			3,491
Columbia, Newberry & Laurens			525
Copper Range*	998	2,428	84
Cornwall R. R.			22
Dayton & Goose Creek			46
De Queen & Eastern			136
Durham & Southern			2,131
East Broad Top R. R. & Canal Co.	1,054		
Escanaba & Lake Superior	310		508
Fonda, Johnstown & Gloversville	1,389		52
Georgia, Florida & Alabama	434	1,148	1,953
Georgia, Southwestern & Gulf			288
Gulf & Sabine River			24
Huntingdon & Broad Top*	3,310	7,024	
Illinois Terminal Co.			33
Interstate R. R.*	4,200	21,544	74
Jefferson Southwestern			22
Lake Erie, Franklin & Clarion	856		
Ligonier Valley			84
Live Oak, Perry & Gulf			44
Longview, Portland & Northern*	10	6,812	60
Louisiana & Pacific*	157	34,214	
Louisiana & Northwest	992	887	99
Louisville & Wadley			40
Midland Terminal*	113	19,027	
Macon, Dublin & Savannah	1,488	940	7,116
Manistee & Northeastern			1,049
Magma Arizona			282
Mineral Range	776		
Minneapolis & Rainy River			76
Minarets & Western			106
Minneapolis, Northfield & Southern*	160	15,058	
Minneapolis, Red Lake & Manitoba			48
Missouri Southern			324
Mississippi Southern			104
Minnesota & International	19,430	6,676	7,615
Mississippi River & Bonne Terre			119
Missouri Illinois			140
Nevada, California, Oregon	4,420		
Newport & Richford	3,457	9,312	366
New Jersey & Indiana			408
Oklahoma City-Ada-Atoka	5,618	2,236	504
Pacific & Idaho Northern	5,160		

Name of railroad	Mileage: Home cars on home roads	Home cars on foreign roads	Foreign cars on home roads
Class II roads (Continued)			
Piedmont & Northern*	2,000	73,000	
Pittsburgh, Lisbon & Western			0
Savannah, Americus & Pacific Ry.*	2,000	37,733	38
Raleigh & Charleston			18
Marion River			24
Red River & Gulf			15
Rio Grande & Eagle Pass			0
Romeo, Sinclair & Pacific			0
San Diego & Arizona*	3,726	25,000	7,[illegible]
Savannah & Atlanta			[illegible]
Seward Valley			20
Sierra Ry. Co. of California			50
South Georgia Ry.			33
Sugarland Ry.*	20.0	41,236	[illegible]
Tampa & Gulf			1,0[illegible]
Tallulah Falls			13
Tennessee, N. M.	11.2		
Texas Midland*	1,0[illegible]	23,139	
Texas Mexican*	13,104	20,[illegible]	1,[illegible]
Texas Southeastern			0
Tonopah & Goldfield	2,249	1,0[illegible]	0
Tonopah & Tidewater	4,[illegible]		1,[illegible]
Bullfrog & Goldfield			
Tuckerton			0
Tucson, Cornelia & Gila Bend*	1[illegible]	1,0[illegible]	3[illegible]
Virginia & Truckee Ry.			23
Washington, Idaho & Montana*			3[illegible]
Weatherford, Mineral Wells & Northwestern			2[illegible]
Western Allegheny			0
Wichita Falls & Southern R. R.	1[illegible]	1,0[illegible]	3[illegible]
Winston-Salem Southbound			0
Wrightsville & Tennille			3[illegible]
Yosemite Valley			2,[illegible]
Switching and terminal roads			
Alton & Southern	20.1		
Belt Ry. of Chicago			2[illegible]
Chicago & Western Indiana			17[illegible]
Chicago Junction*	0*	1,[illegible]	0
Indiana Harbor Belt			3,[illegible]
Indianapolis Union			0
Peoria Railway Terminal Co.			0
Portland Terminal Ry.			0
Terminal Ry. Assn. of St. Louis*		24,[illegible]	
Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans			0,[illegible]
Toledo Terminal R. R.			[illegible]
Troy Union Railroad			[illegible]
Union Ry. (Penn.)			2
Union R. R. (Penn.)	0[illegible]		

APPENDIX C

Movement of private cars occupied by directors of Pennsylvania Railroad

Date	Destination	Mileage	
		Home line	Foreign lines
First director			
Jan 6, 1923	Palm Beach, Fla	270	2,281
June 29, 1923	Mount Desert Ferry, Me	182	1,056
Sept 21, 1923	do	182	1,056
Jan 16, 1924	Palm Beach, Fla	269	2,135
Feb 22, 1924	do	270	2,110
June 30, 1924	Mount Desert Ferry, Me	182	1,056
July 23, 1924	do	182	1,056
Jan 11, 1925	Palm Beach, Fla	270	2,149
Feb 11, 1925	do	269	2,149
Mar 26, 1925	Deadhead one way	270	2,149
June 30, 1925	Mount Desert Ferry, Me, deadhead return	182	1,056
Second director			
Aug 30, 1923	Bristol, Mass	871	491
Oct 12, 1923	Hot Springs, Va	730	570
Jan 11, 1924	Norfolk, Va	1,022	375
Jan 21, 1924	do	270	375
Feb 13, 1924	Miami, Fla	270	2,239
Mar 26, 1924	do	270	2,239
Nov 23, 1924	Norfolk, Va, deadhead one way	270	443
Dec 30, 1924	Lake Placid, N Y	524	666
Jan 29, 1925	Miami, Fla	624	2,115
Jan 24, 1925	Elizabeth City, N C	1,434	982
Apr 1, 1925	Miami, Fla	852	2,281
Nov 28, 1925	Elizabeth City, N C	1,099	839
Third director			
Feb 1, 1923	Fayetteville, N C	270	655
Feb 20, 1923	Pittsburgh, Pa	218	702
Mar 16, 1923	Fayetteville, N C	270	655
Mar 21, 1923	Pittsburgh, Pa	270	694
Feb 15, 1924	do	270	698
Mar 18, 1924	do	270	702
Jan 29, 1925	Fayetteville, N C	430	655
Feb 23, 1925	Pittsburgh, Pa	269	705
Mar 13, 1925	do	270	728
Apr 9, 1925	Fayetteville, N C	270	655
Dec 5, 1925	do	270	655
Fourth director			
Feb 3, 1923	South Bass Grande, Fla	270	2,202
Mar 22, 1923	do	269	2,084
Sept 6, 1923	Saguenay, N Y	212	200
Sept 18, 1923	do	212	200
Jan 17, 1924	South Bass Grande, Fla	269	2,116
Mar 21, 1924	do	270	2,317
Sept 6, 1924	Saguenay, N Y	197	200
Sept 23, 1924	Saguenay, N Y, deadhead going	197	412
Fifth director			
Aug 3, 1923	Boston, Mass	182	694
Aug 21, 1923	do	182	694
Aug 4, 1924	Boston, Mass, deadhead return	182	694
Aug 16, 1924	Boston, Mass, deadhead going	182	694
Aug 4, 1925	Boston, Mass, deadhead return	182	694
Aug 15, 1925	Boston, Mass, deadhead going	182	694
Sixth director			
Feb 8, 1923	South Bass Grande, Fla	270	2,114
Mar 26, 1923	do	270	2,080
Apr 23, 1924	Brunswick, Ga	270	1,402
Aug 17, 1924	Montreal, Canada, deadhead return	182	1,003
Sept 6, 1924	Montreal, Canada, deadhead going	182	1,003
Seventh director			
Nov 22, 1924	Charleston, S C	269	1,025
Jan 5, 1925	do	430	1,025
Jan 30, 1925	Palm Beach, Fla, deadhead one way	270	2,819
Feb 25, 1925	do	270	2,819
Nov 17, 1925	Charleston, S C	269	1,025
Eighth director			
Feb 14, 1923	Miami, Fla	363	2,759
Mar 5, 1923	Ormond, Fla	270	1,784
Aug 23, 1923	Buffalo, N Y	807	485

APPENDIX D

Movement of private cars occupied by a vice president of one carrier and executive of others

Car	Reported leaving	Date	For	Returned to	Date	Mileage on reporting road	Mileage on foreign lines
D. & H. report:							
D. & H. 400	Albany, N. Y.	Jan. 21, 1923	Chicago, Ill., and San Francisco, Calif.	Albany, N. Y.	Mar. 2, 1923	15	7,127
Do	do	Apr. 30, 1923	New York, N. Y.	do	May 3, 1923		262
Do	do	May 13, 1923	Lyon Mountain and New York, N. Y.	do	May 8, 1923	407	574
Do	do	May 16, 1923	Washington, D. C.	do	May 24, 1923	5	2,655
Do	do	June 17, 1923	Chicago, Ill.	do	June 23, 1923	5	2,125
Do	do	June 25, 1923	Lyon Mountain and New York, N. Y.	do	June 26, 1923	810	284
Do	Plattsburg, N. Y.	July 8, 1923	San Francisco, Calif.	do	July 27, 1923	162	7,187
Do	Albany, N. Y.	July 28, 1923	Lyon Mountain and Plattsburg, N. Y.	do	Aug. 3, 1923	732	455
Do	Lyon Mountain, N. Y.	Aug. 15, 1923	New York, N. Y.	do	Aug. 22, 1923	402	200
Do	do	Aug. 30, 1923	do	do	do	202	284
D. & H. 199	Albany, N. Y.	Aug. 25, 1923	Plattsburg and New York, N. Y.	do	Aug. 27, 1923	162	200
D. & H. 500	do	Sept. 13, 1923	Lyon Mountain and New York, N. Y.	do	Sept. 18, 1923	402	284
D. & H. 400	do	Sept. 27, 1923	San Francisco, Calif.	do	Oct. 12, 1923	204	6,722
D. & H. 500	Lyon Mountain, N. Y.	Nov. 5, 1923	New York, N. Y.	do	Nov. 8, 1923	407	443
D. & H. 400	Albany, N. Y.	Nov. 28, 1923	Lyon Mountain and New York, N. Y.	do	Dec. 5, 1923	443	200
Do	do	Dec. 23, 1923	New York, N. Y.	do	Dec. 26, 1923	204	284
Do	Lyon Mountain, N. Y.	Jan. 1, 1924	do	do	Jan. 3, 1924	6	284
D. & H. 500	do	Jan. 26, 1924	do	do	Jan. 29, 1924	407	200
Do	Albany, N. Y.	Feb. 14, 1924	do	Troy, N. Y.	Feb. 14, 1924	306	856
D. & H. 400	do	Mar. 14, 1924	Lyon Mountain and New York, N. Y.	Albany, N. Y.	Mar. 26, 1924	402	114
Do	do	Apr. 10, 1924	Chicago, Ill., Lyon Mountain, and New York, N. Y.	do	Apr. 30, 1924	402	3,150
Do	do	May 7, 1924	New Orleans, La.	do	May 30, 1924		5,529
Do	do	May 30, 1924	Lyon Mountain, N. Y., and Toledo, Ohio	do	June 11, 1924	402	1,409
Do	do	June 18, 1924	New York, N. Y.	do	June 20, 1924	416	573
Do	do	June 30, 1924	Lyon Mountain and New York, N. Y.	do	July 3, 1924	413	284
Do	do	July 14, 1924	do	do	July 31, 1924	1,566	3,258
D. & H. 199	do	July 15, 1924	Louisville, Ky.	do	July 22, 1924	206	1,192
D. & H. 400	do	Aug. 23, 1924	Lyon Mountain and New York, N. Y.	do	Aug. 26, 1924	402	148
Do	do	Aug. 28, 1924	North Bay, Ontario	do	Sept. 4, 1924	545	718
Do	do	Sept. 8, 1924	Lyon Mountain, New York, and Plattsburg, N. Y.	do	Sept. 15, 1924	1,211	870
Do	do	Sept. 27, 1924	New York, N. Y.	do	Oct. 8, 1924	402	432
Do	do	Oct. 11, 1924	Lyon Mountain and New York, N. Y.	do	Oct. 20, 1924	941	3,958
Do	do	Oct. 30, 1924	New York and Lyon Mountain, N. Y.	do	Nov. 13, 1924	402	200

Wabash report:								
Wab. 400	New York, N. Y.	Nov. 15, 1924	Albany and Lyon Mountain, N. Y.	New York, N. Y.	Nov. 17, 1924			692
Do.	do	Nov. 21, 1924	Albany, N. Y.	do	Nov. 24, 1924			692
Do.	do	Nov. 29, 1924	do	do	Dec. 1, 1924			692
Do.	do	Dec. 5, 1924	do	do	Dec. 7, 1924			771
Do.	do	Dec. 12, 1924	do	do	Dec. 16, 1924			771
Do.	do	Dec. 31, 1924	do	do	Jan. 6, 1925			692
Do.	do	Jan. 23, 1925	do	do	Jan. 27, 1925			692
Do.	do	Feb. 6, 1925	do	do	Feb. 10, 1925			692
Do.	do	Feb. 11, 1925	San Francisco, Calif.	do	Mar. 10, 1925	664	9,333	
Do.	do	Mar. 13, 1925	Albany and Lyon Mountain, N. Y.	do	Mar. 17, 1925			771
Do.	do	Mar. 20, 1925	do	do	Mar. 24, 1925			771
Do.	do	Mar. 27, 1925	do	do	Mar. 30, 1925			692
Do.	do	Apr. 13, 1925	Washington, D. C.	do	Apr. 15, 1925			480
Do.	do	Apr. 16, 1925	Albany and Lyon Mountain, N. Y.	do	Apr. 21, 1925			692
Do.	do	Apr. 21, 1925	do	do	Apr. 27, 1925			692
Do.	do	Apr. 30, 1925	do	do	May 6, 1925			692
D. & H. report:								
D. & H. 500	Albany, N. Y.	May 14, 1925	Lyon Mountain, N. Y.	do	May 19, 1925	402	430	
Wabash report:								
Wab. 400	New York, N. Y.	May 29, 1925	Albany and Lyon Mountain, N. Y.	do	June 2, 1925			692
Do.	do	June 4, 1925	Washington, D. C.	do	June 5, 1925			480
Do.	do	June 5, 1925	Albany and Lyon Mountain, N. Y.	do	June 9, 1925			692
Do.	do	June 11, 1925	do	do	June 16, 1925			692
Do.	do	June 18, 1925	do	do	June 23, 1925			692
Do.	do	June 24, 1925	do	do	June 29, 1925			692
Do.	do	July 1, 1925	do	do	July 6, 1925			692
Do.	do	July 24, 1925	Albany and Plattsburg, N. Y.	do	July 28, 1925			674
Do.	do	July 29, 1925	Albany and Lyon Mountain, N. Y.	do	Aug. 1, 1925			692
Do.	do	Aug. 6, 1925	do	do	Aug. 11, 1925			692
Do.	do	Aug. 12, 1925	do	do	Aug. 13, 1925			692
Do.	do	Sept. 2, 1925	do	do	Sept. 8, 1925			692
Do.	do	Sept. 10, 1925	San Francisco, Calif.	do	Oct. 5, 1925			7,193
D. & H. report:								
D. & H. 500	Albany, N. Y.	Sept. 17, 1925	New York and Lyon Mountain, N. Y.	Washington, D. C., and Albany, N. Y.	Sept. 27, 1925	800	1,319	
Wabash report:								
Wab. 400	New York, N. Y.	Oct. 8, 1925	Albany and Lyon Mountain, N. Y.	New York, N. Y.	Oct. 13, 1925			692
Do.	do	Oct. 13, 1925	Pittsburgh, Pa.	do	Oct. 16, 1925			1,447
Do.	do	Nov. 5, 1925	Albany and Lyon Mountain, N. Y.	do	Nov. 8, 1925			692
Do.	do	Nov. 13, 1925	do	do	Nov. 15, 1925			771
Do.	do	Nov. 20, 1925	Boston, Mass.	do	Nov. 23, 1925			476
D. & H. report:								
D. & H. 500	Albany, N. Y.	Nov. 24, 1925	New York and Lyon Mountain, N. Y.	Albany, N. Y.	Dec. 2, 1925	266	415	
Wabash report:								
Wab. 400	New York, N. Y.	Dec. 11, 1925	Albany and Lyon Mountain, N. Y.	New York, N. Y.	Dec. 15, 1925			771

[1] Lyon Mountain is a resort in the Adirondacks.

[2] This movement also included other destinations.

APPENDIX E

Statement covering private cars of the Nickel Plate

Number of car	Old number or date car was built for Nickel Plate	To whom assigned and periods of assignment	Periods cars on lines (months)	Trips exclusively on home line		Home line portion of trips on home and foreign lines (miles)	Total mileage of home cars on home lines		Foreign line portion of trips on home and foreign lines		Total mileage of home cars on home and foreign lines	
				Miles	Miles per car month		Miles	Miles per car month	Miles	Miles per car month	Miles	Miles per car month
21	T. S. L. & W. 60	General superintendent, Frankfort, Ind., Jan. 1, 1923, to Dec. 31, 1925	36	61,672	1,713	414	62,086	1,725	426	12	62,512	1,736
22	T. S. L. & W. 400	Senior vice president, Toledo, Ohio, Jan. 1, 1923, to Dec. 31, 1925	36	13,942	387	7,837	21,779	605	31,586	877	53,365	1,482
23	L. E. W. 69	General superintendent, Jan. 1, 1923, to Dec. 31, 1925, chief engineer, Jan. 1, 1923, to Sept. 16, 1924, district engineer, Sept. 16, 1924, to June 1, 1925, district engineer, June 1, 1925, to Dec. 31, 1925, Indianapolis, Ind.	36	57,898	1,608	2,816	60,714	1,687	2,717	75	63,431	1,762
24	L. E. W. 100	General manager, Jan. 1, 1923, to Feb. 14, 1923, no assignment, Feb. 14, 1923, to Dec. 31, 1924, vice president and general manager, Dec. 31, 1924, to Feb. 5, 1925, assistant general manager, Feb. 5, 1925, to Dec. 31, 1925, Indianapolis, to Feb. 14, 1923, Cleveland, subsequently	36	42,427	1,179	8,104	50,531	1,404	43,891	1,219	94,422	2,623
25		President, Jan. 1, 1923, to Feb. 5, 1925, vice president and general manager, Feb. 5, 1925, to Dec. 31, 1925, Cleveland, Ohio	36	45,312	1,259	10,218	55,530	1,543	59,597	1,655	115,127	3,198
26		Vice president and general manager Jan. 1, 1923, to Dec. 31, 1924, superintendent motive power, Jan. 1, 1925, to Dec. 31, 1925, general superintendent, Jan. 1, 1925, to Apr. 3, 1925, general superintendent, Apr. 11, 1925, to Dec. 31, 1925, chief engineer, Jan. 1, 1925, to May 18, 1925, chief engineer, June 1, 1925, to Dec. 31, 1925, Cleveland, Ohio	36	80,267	2,229	6,520	86,787	2,411	11,363	317	107,134	2,977
27	Built Feb., 1925	Chairman, Feb. 5, 1925, to Dec. 31, 1925, Cleveland, Ohio	11	3,301	300	36	3,337	303	39,791	3,617	34,129	3,102
28	Built as No. 27, May, 1923, restenciled No. 28, Jan. 13, 1925	Chairman, May 16, 1923, to Feb. 5, 1925, president, Feb. 5, 1925, to Dec. 31, 1925, Cleveland, Ohio	32	23,752	742	317	29,369	887	74,818	2,338	102,971	3,218

[1] Note the heavy foreign-line mileage of cars 27, 28, 27, and 28 (italic) and the comparatively heavy average miles per car month of the two latter cars on foreign lines.

APPENDIX F

Statement showing movement of the Louisiana & Pacific (Long-Bell Lumber Corporation) private cars over the Union Pacific Railroad

Car initial and number	Date	From—	To—	Occupants of car (exclusive of car crew)	Transportation	Total mileage on U. P. R. R.
L. & P. Kymokan 100	Apr. 21, 1923	Kelso, Wash	Portland, Oreg	Vice president, S. A. & S. W	Pass	48
				Secretary to vice president	Ticket	
				Assistant to vice president	do	
Do	May 23, 1923	Portland, Oreg	Kelso, Wash	Vice president, S. A. & S. W	Pass	48
				Secretary to vice president	Ticket	
				Assistant to vice president	do	
				Superintendent, Long Bell Lbr. Mills	do	
Do	June 19, 1923	Omaha, Nebr	Portland, Oreg., and Kansas City, Mo	Vice president, S. A. & S. W	Passes	3,790
				Two children of vice president	do	
				Four relatives of vice president	Tickets	
				Secretary to vice president	Ticket	
Do	July 11, 1923	Portland, Oreg	Kansas City, Mo	Vice president, S. A. & S. W	Pass	2,110
				Manager of Longview Farm and wife	Tickets	
				Grandson of president	Ticket	
				Two maids	Tickets	
				Assistant to vice president and wife	do	
L. & P. 101	Sept. 11, 1924	Longview Junction, Wash	Portland, Oreg	Vice president, S. A. & S. W	Pass	45
				Employee	do	
Do	Nov. 15, 1924	Denver, Colo	Ogden, Utah	Vice president, S. A. & S. W	Pass	589
				Two employees	Passes	
L. P. & N. 101	Feb. 1, 1924	Omaha, Nebr	Portland, Oreg	Vice president, S. A. & S. W	Pass	1,775
				Chairman, S. A. & S. W., and wife	Passes	
				Valet to chairman	Pass	
				Assistant to vice president	Ticket	
				Chief clerk, Long Bell Lbr. Co	do	
Do	May 7, 1924	Longview Junction, Wash	Portland, Oreg	Vice president, S. A. & S. W	Pass	45
				General manager, Long Bell Lbr. Co	Ticket	
				Superintendent, Long Bell Lbr. Co	do	
				Manager of stores, Long Bell Lbr. Co	do	
Do	May 19, 1924	Ogden, Utah	Omaha, Nebr	Vice president, S. A. & S. W	Pass	990
				Four employees	Passes	
Do	June 7, 1924	Omaha, Nebr	Portland, Oreg	Vice president, S. A. & S. W	do	1,773
				Two children of vice president	do	
				Friend of vice president's son	Ticket	
				Father of vice president	do	
				Secretary to vice president	do	
				Assistant to vice president	do	
				Family of cook on car	Passes	

Statement showing movement of the Louisiana & Pacific Long Bell Lumber Corporation's private cars over the Union Pacific Railroad—Contd

Car initial and number	Date	From	To	Occupants of car (exclusive of car crew)	Transportation	Total mileage on U. P. R. R.
L. P. & N. 101	Jan. [illegible], 1925	Portland, Oreg.	Omaha, Nebr.	Vice president, S. A. & S. W. Wife and two children of vice president	Pass. Passes	1,782
Do.	Jan. 15, 1925	Kansas City, Mo.	Portland, Oreg.	Vice president and general manager, S. A. & S. W. Wife of chairman, S. A. & S. W. Daughter of chairman Maid of chairman's wife	Pass. Do. Ticket Pass.	2,013
Do.	Feb. 2, 1925	Longview Junction, Wash.	Portland, Oreg.			67
Do.	Apr. 9, 1925	Portland, Oreg.	Omaha, Nebr.	Chairman, S. A. & S. W. President, S. A. & S. W., and wife Treasurer, Long Bell Lbr. Co. Sister of president's wife Valet to chairman Vice president and general manager Vice president, S. A. & S. W.	Pass. Passes Ticket Do. Pass. Do. Do.	1,782
Do.	June 11, 1925	Omaha, Nebr.	Portland, Oreg.	Wife and two children of vice president Assistant to vice president Granddaughter of vice president Secretary to vice president Friend of son of vice president Father of vice president Invalchair	Passes Pass. Ticket Do. Do. Do. Do.	1,772
Do.	June 18, 1925	Portland, Oreg.	Omaha, Nebr.			2,782
Do.	July 17, 1925	Omaha, Nebr.	Ogden, Utah.	Vice president and general manager, S. A. & S. W., and wife Valet to vice president Maid to vice president's wife	Passes Pass Do.	908
Do.	Aug. 28, 1925	Portland, Oreg.	Omaha, Nebr.	Vice president and general manager, S. A. & S. W. Valet to vice president Maid to vice president's wife Two passengers	Passes Pass Do. Tickets	1,782
Do.	Sept. 12, 1925	Kansas City, Mo.	Portland, Oreg., and Omaha, Nebr.	Vice president, S. A. & S. W. Assistant to vice president and wife Treasurer, Long Bell Lbr. Co., and wife Maid	Pass. Passes Tickets Ticket	2,790

APPENDIX G

Statement showing movement of Nevada Northern private cars on Western Pacific, Southern Pacific, and Union Pacific

Car	Date	From—	To—	Occupants	Mileage
On Western Pacific[1]					
No. 100	Jan. 4, 1923	Salt Lake, Utah	Shaffer, Nev.	General manager, N. N.	162
Do.	Feb. 1, 1923	Shaffer, Nev.	Salt Lake, Utah	Deadhead	162
Do.	Feb. 7, 1923	Salt Lake, Utah	Shaffer, Nev.	General manager, N. N.	162
Do.	June 9, 1923	Shaffer, Nev.	Salt Lake, Utah	do	162
Do.	Sept. 26, 1923	do	Oakland, Calif.	General manager, N. N., and wife	762
Do.	July 13, 1923	do	Salt Lake, Utah	General manager, N. N.	324
Do.	June 14, 1923	do	do	General manager, N. N., and wife, wife of M. M. & F. wife of chief surgeon, N. N.	762
Do.	Oct. 19, 1923	do	do	General manager, N. N.	162
Do.	Nov. 6, 1923	Salt Lake, Utah	Shaffer, Nev.	do	162
Do.	Mar. 17, 1924	Shaffer, Nev.	Salt Lake, Utah	General manager, N. N., and wife, traffic manager, N. N., and wife	324
Cyprus	Mar. 27, 1924	Oakland, Calif.	Shaffer, Nev.	Vice president, N. N., and wife	762
Do.	Mar. 31, 1924	Shaffer, Nev.	Salt Lake, Utah	do	162
Do.	Aug. 4, 1924	do	do	do	162
Do.	Aug. 16, 1924	Alston, Nev.	Oakland, Calif.	do	713
No. 101	Jan. 24, 1923	Shaffer, Nev.	Salt Lake, Utah	General manager, N. N.	162
Do.	Mar. 6, 1923	Salt Lake, Utah	Shaffer, Nev.	Vice president, N. N.	162
Do.	May 18, 1923	Shaffer, Nev.	Oakland, Calif.	General manager, N. N., and wife	762
Do.	June 29, 1923	do	Salt Lake, Utah	do	162
Do.	July 2, 1923	Salt Lake, Utah	Shaffer, Nev.	General manager, N. N.	162
Do.	Aug. 11, 1923	Alston, Nev.	Oakland, Calif.	do	713
Do.	Nov. 22, 1923	Shaffer, Nev.	Salt Lake, Utah	do	162
Total miles					7,228
On Southern Pacific[2]					
No. 101	Jan. 2, 1923	Cobre, Nev.	Ogden, Utah	General manager, N. N.	137
Do.	Feb. 20, 1923	do	San Francisco, Calif., Maricopa, Ariz.	Vice president, C. R. & N. W.	1,619
Cyprus	[3]	Oakland Pier, Calif.	Cobre, Nev.	Vice president, N. N.	641
No. 101	Mar. 6, 1923	Maricopa, Ariz.	San Francisco, Calif., Cobre, Nev.	Vice president, C. R. & N. W.	1,620
Cyprus	May 10, 1923	Deming, N. Mex.	Maricopa, Ariz.	Vice president, N. N.	310
Do.	May 13, 1923	Maricopa, Ariz.	Oakland Pier, Calif.	do	897
No. 100	May 25, 1923	Ogden, Utah	Cobre, Nev.	President, C. R. & N. W.	138
Do.	May 27, 1923	Cobre, Nev.	Ogden, Utah	do	137
No. 101	June 15, 1923	Oakland, Calif.	Cobre, Nev.	General manager, N. N.	641
Cyprus	Aug. 15, 1923	Ogden, Utah	Oakland Pier, Calif., Sacramento, Calif., Oakland Pier, Calif.	Vice president, N. N.	1,727
No. 100	Aug. 4, 1923	Portland, Oreg.	Merced, Calif.	President, N. N.	914
Do.	Aug. 9, 1923	Merced, Calif.	Ogden, Utah	do	808
Cyprus	do	Oakland, Calif.	do	Vice president, N. N.	778
No. 100	Oct. 18, 1923	Ogden, Utah	Cobre, Nev.	President, C. R. & N. W.	138
Do.	Oct. 20, 1923	Cobre, Nev.	Ogden, Utah	do	137
Cyprus	Nov. 19, 1923	Deming, N. Mex.	Los Angeles, Calif.	Vice president, N. N. (for repairs)	1,440
Do.	Dec. 2, 1923	do	Maricopa, Ariz.	Vice president, N. N.	310

[1] Car Cyprus is privately owned by a vice president of the Nevada Northern.
[2] Trips made on Western Pacific by Nevada Northern cars 100, 101, and Cyprus during 1923, 1924, and 1925.
[3] Trips made on Southern Pacific by Nevada Northern cars 100, 101, and Cyprus.

Statement showing movement of Nevada Northern private cars on Western Pacific, Southern Pacific, and Union Pacific—Continued

Car	Date	From—	To—	Occupants	Mileage
On Southern Pacific—Con.					
Cyprus	Dec. 5, 1923	Maricopa, Ariz.	San Francisco, Calif.; Oakland, Calif.	Vice president, N. N.	979
No. 101	Jan. 21, 1924	Cobre, Nev.	Oakland Pier, Calif.	General manager, N. N.	1,282
Cyprus	do	Oakland Pier, Calif	Ogden, Utah	Vice president, N. N.	778
Do	Mar. 15, 1924	Ogden, Utah	Oakland Pier, Calif	do	770
Do	May 7, 1924	Deming, N. Mex.	Maricopa, Ariz.	do	310
Do	May 10, 1924	Maricopa, Ariz.	Oakland Pier, Calif.; Sacramento, Calif.	do	995
Do	do	Sacramento, Calif.	Oakland Pier, Calif.	Unoccupied	85
No. 101	June 6, 1924	Cobre, Nev.	do	General manager, N. N.	1,282
Do	July 6, 1924	do	Reno, Nev.	do	401
Cyprus	June 4, 1924	Oakland Pier, Calif.	Cobre, Nev.	Vice president, N. N.	636
Do	Aug. 15, 1924	Ogden, Utah	Alazon, Nev.	do	180
Cyprus	Aug. 22, 1924	Oakland, Calif.	Ogden, Utah	Vice president, N. N.	773
No. 101	Sept. 27, 1924	Cobre, Nev.	Oakland Pier, Calif.	General manager, N. N.	1,277
No. 100 C. R. & N. W.	Nov. 22, 1924	Los Angeles, Calif.	El Paso, Tex.	Treasurer, C. R. & N. W.	853
Do	Dec. 11, 1924	Ogden, Utah	Cobre, Nev.	President, C. R. & N. W.	139
Do	Dec. 12, 1924	Cobre, Nev.	Ogden, Utah	do	138
Do	Dec. 24, 1924	Ogden, Utah	Oakland Pier, Calif.	do	1,521
Cyprus	Dec. 3, 1924	El Paso, Tex.	Ray Junction, Ariz.; Oakland Pier, Calif.	Vice president, N. N.	1,528
No. 100 C. R. & N. W.	Feb. 11, 1925	Tucumcari, N. Mex.	El Centro, Calif.	President, C. R. & N. W.	965
No. 101	Feb. 17, 1925	Los Angeles, Calif.	Nogales, Ariz.	General manager, N. N.	569
Do	Feb. 28, 1925	Nogales, Ariz.	Los Angeles, Calif.	do	569
Cyprus	(?)	Oakland Pier, Calif.	Ogden, Utah	Vice president, N. N.	773
Do	Mar. 23, 1925	do	do	do	773
Do	May 4, 1925	Deming, N. Mex.	Ray Junction, Ariz.	do	491
Do	May 10, 1925	Los Angeles, Calif.	Oakland Pier, Calif.	do	497
No. 101	May 20, 1925	Oakland, Calif.	Cobre, Nev.	General manager, N. N.	636
Cyprus	July 10, 1925	Oakland Pier, Calif.	Deming, N. Mex.; Winkleman, Ariz.; Phoenix, Ariz.; Ray Junction, Ariz.; San Francisco, Calif.; Portland, Oreg.	Vice president, N. N.	3,656
Do	Aug. 22, 1925	Ogden, Utah	Oakland Pier, Calif.	do	779
No. 101	Aug. 19, 1925	Oakland, Calif.	Cobre, Nev.	General manager, N. N.	636
Cyprus	Aug. 15, 1925	Cobre, Nev.	Wells, Nev.	Vice president, N. N.	47
Do	(?)	Oakland Pier, Calif.	Ogden, Utah	do	773
Do	Nov. 5, 1925	Phoenix, Ariz.	Ray Junction, Ariz.	do	499
Do	Nov. 8, 1925	Deming, N. Mex.	Tucumcari, N. Mex.	do	420
Do	Dec. 1, 1925	Ogden, Utah	Oakland Pier, Calif.; San Jose, Calif.; Oakland Pier, Calif.	do	965
					[1] 35,700

[1] Total mileage, not including 3,616 miles by C. R. & N. W. car No. 101.

Trips made on Union Pacific by Nevada Northern private cars

Car	Movement	Occupants
N. N. 100	Ogden, Utah, to Los Angeles, Calif., Aug. 13, 1923, mileage 1,708.	President, N. N., and wife, passes; president's daughter, pass; secretary to president, pass; two guests, tickets; two maids, tickets; valet, ticket.
Do	Council Bluffs, Iowa, to Salt Lake City, Utah, May 21, 1923, mileage 1,065.	President, C. R. & N. W., pass; vice president and general manager, C. R. & N. W., pass; another vice president, C. R. & N. W. pass; secretary to president, pass.
Do	Ogden, Utah, to Council Bluffs, Iowa, May 28, 1923, 993 miles.	President, C. R. & N. W., pass; vice president, C. R. & N. W., pass; secretary to president, pass
Do	Butte, Mont., to Salt Lake City, Utah, Oct. 16, 1923, mileage 469.	President, C. R. & N. W., pass; two employees of N. N., passes.
Do	Ogden, Utah, to Omaha, Nebr., Oct. 21, 1923, mileage 990.	President, C. R. & N. W., pass; vice president and general manager, C. R. & N. W., pass; secretary to president, pass.
N. N. Ely 101	Ogden, Utah, to Omaha, Nebr., Jan. 3, 1923, mileage 990.	General manager, N. N., and wife, passes; daughter of general manager, pass; nurse, pass.
Do	Omaha, Nebr., to Salt Lake City, Utah, Jan. 9, 1923, mileage 1,026.	General manager, N. N., and crew (cook and porter), passes.
Do	Salt Lake City, Utah, to Council Bluffs, Iowa, Feb. 2, 1923, mileage 2,058.	General manager, N. N., and wife, daughter, and crew, passes.
Do	Salt Lake City, Utah, to Los Angeles, Calif., Oct. 19, 1923, mileage 784.	General manager, N. N., and wife, passes; chief surgeon, N. N., and wife, passes; storekeeper, pass.
Do	Los Angeles, Calif., to Salt Lake City, Utah, Nov. 4, 1923, mileage 784.	
N. N. Cyprus	Salt Lake City, Utah, to Ogden, Nev., Mar. 24, 1923, mileage 433.	Vice president, N. N., and wife, passes; maid, pass; secretary to vice president, pass.
Do	Salt Lake City to Ogden, Utah, Aug. 13, 1923, mileage 36.	Vice president, N. N., pass; secretary to vice president, pass.
Do	Ogden, Utah, to Butte, Mont., via Salt Lake City, Utah, Oct. 2, 1923, mileage 469.	Vice president, N. N., and wife, passes; maid, pass; secretary, pass; vice president and general manager, B. & G., pass; assistant general manager, Utah Copper Co., ticket.
Do	Salt Lake City to Ogden, Utah, Aug. 6, 1924, mileage 1,044.	President, B. & G., pass; secretary, pass; vice president, B. & G., pass; doctor, ticket; passenger, ticket.
Do	Ogden, Utah, to Omaha, Nebr., Oct. 9, 1924, mileage 1,062.	President, B. & G., and wife, passes; secretary and maid, passes.
Do	Omaha, Nebr., to Ogden, Utah, Mar. 14, 1924, mileage 990.	President, B. & G., and secretary, passes.
Do	Ogden, Utah, to Omaha, Nebr., Mar. 2, 1925, mileage 990.	President, B. & G., and secretary, passes.
Do	Butte, Mont., to Salt Lake City, Utah, Mar. 17, 1925, mileage 433.	Do.
Do	Ogden, Utah, to Omaha, Nebr., Apr. 2, 1925, mileage 990.	President, B. & G., wife, maid, and secretary, passes.
Do	Butte, Mont., to Salt Lake City, Utah, Aug. 11, 1925, mileage 433.	President, B. & G., and secretary, passes.
Do	Salt Lake City to Ogden, Utah, Aug. 18, 1925, mileage 578.	President, B. & G., and secretary, passes.
Do	Ogden, Utah, to Omaha, Nebr., Sept. 30, 1925, mileage 1,062.	President, B. & G., wife, secretary, and maid, passes; guest, ticket.
Do	Omaha, Nebr., to Ogden, Utah, Nov. 30, 1925, mileage 990.	President, B. & G., and secretary, passes.
N. N. 100	Council Bluffs, Iowa, to Salt Lake City, Utah, Aug. 7, 1925, mileage 2,946. Trude, Idaho; Pocatello, Idaho.	President, N. N., pass; five passengers, tickets; valet, ticket; secretary, ticket.
N. N. 101	Salt Lake City, Utah, to Los Angeles, Calif., Feb. 14, 1925, mileage 784.	General manager, N. N., and wife, passes; secretary, pass; chief surgeon, N. N., and wife, passes.
Do	Los Angeles, Calif., to Salt Lake City, Utah, Mar. 4, 1925, mileage 784.	Do.
Do	Salt Lake City, Utah, to Payette, Idaho, and return, June 29, 1925, mileage 940.	General manager, N. N., and wife, passes.

APPENDIX H

Statement showing movement of Pullman cars occupied by railway officials and others and transported free or at less than published tariff rates

ON UNION PACIFIC RAILROAD

Name of car	Movement	Occupants
National	Omaha, Nebr., to Ogden, Utah, Mar. 10, 1923, mileage 990.	Cook and porter.
Do	Ogden, Utah, to Omaha, Nebr., Mar. 13, 1923, mileage 990.	Director of M. P. R. R., pass; two nurses, passes; four passengers, tickets.
Do	Omaha, Nebr., to Ogden, Utah, Aug. 31, 1923, mileage 990.	Waiter, cook, and porter.
Do	Ogden, Utah, to Omaha, Nebr., Sept. 5, 1923, mileage 990.	Director of M. P. R. R., and wife, passes; three passengers, tickets.
Pioneer	Omaha, Nebr., to Ogden, Utah, Jan. 20, 1923, mileage 990.	Director of S. P. Co., pass; valet to director, pass; relative of director, her secretary, maid, and man servant, tickets.
Do	Ogden, Utah, to Omaha, Nebr., Jan. 23, 1923, mileage 990.	Director of S. P. Co., pass; valet, pass; relative of director, her secretary, maid, man servant, and laundress, tickets.
Do	Ogden, Utah, to Omaha, Nebr., Mar. 10, 1923, mileage 990.	Director of S. P. Co., pass; director's valet, pass; director's relative, her secretary and servants, tickets.
Boston	Omaha, Nebr., to Ogden, Utah, Mar. 2, 1924, mileage 990.	Director of S. P. Co., pass; director's valet, pass; director's relative, her secretary, and three maids, tickets.
Do	Ogden, Utah, to Omaha, Nebr., Mar. 8, 1924, mileage 990.	Do.
Do	Omaha, Nebr., to Los Angeles, Calif., July 29, 1924, mileage 1,810.	Car crew.
Do	Butte, Mont., to Omaha, Nebr., Aug. 27, 1924, mileage 1,681.	President of T. & W. Ry., wife and daughter, passes; two passengers, tickets.
Chicago	Omaha to Portland, Oreg., Mar. 17, 1924, via Denver, mileage 2,229.	President of T. & W. Ry., and wife, passes; secretary to president, ticket; two passengers, tickets; maid and valet, passes.
Advance	Portland, Oreg., to Omaha, Nebr., July 8, 1925, mileage 1,994.	Assistant to president of N. P., pass; personal physician of assistant to president, and wife, tickets; four Government officials, tickets.
Philadelphia	Omaha, Nebr., to Ogden, Utah, July 17, 1925, mileage 990.	Director of S. P., pass; valet, pass; relative of director, her secretary, and three servants, tickets.
Do	Ogden, Utah, to Omaha, Nebr., Jan. 21, 1925, mileage 990.	Do.
Washington	Omaha, Nebr., to Seattle, Wash., Apr. 7, 1925, mileage 1,970.	Director U. P. R. R., pass; three passengers, tickets.

ON NEW YORK CENTRAL RAILROAD

Pullman car	Date	Occupants
Pioneer	Jan. 17, 1923	Director, N. Y. C., and party.
Do	Mar. 12, 1923	Do.
Boston	Apr. 30, 1923	Wife of president, N. Y. C.
Chicago	June 11, 1923	President, R. L. Trans. Co.
Republic	Aug. 26, 1923	Do.
National	Sept. 7, 1923	Director.
Boston	Oct. 15, 1923	President, Magma Arizona R. R.
Chicago	Oct. 15, 1923	President, R. L. Trans. Co.
Do	Oct. 17, 1923	Do.
Adventurer	Nov. 1, 1923	Director, Mo. Pac.
Do	Nov. 5, 1923	Do.
Newport	Nov. 1, 1923	Director, A., T. & S. F.
Do	Nov. 5, 1923	Do.
Washington	Jan. 15, 1924	Director, N. Y. C., and party.
Boston	Mar. 10, 1924	Do.
Colonial	Apr. 17, 1924	Vice president and treasurer, C. R. & N. W., and party.
Newport	Apr. 22, 1924	President, Magma Arizona R. R.
Constitution	Apr. 27, 1924	Director, L. A. & S. L.
Do	Apr. 30, 1924	Do.
Superb	June 14, 1924	Director, Vgn. Ry., and party.
Pioneer	July 2, 1924	Chairman, Union Stock & Transit Co., and party.
Do	Aug. 28, 1924	Do.
Adventurer	Oct. 13, 1924	President, R. L. Trans. Co., and party.
Do	Oct. 17, 1924	Do.

Statement showing movement of Pullman cars occupied by railway officials and others and transported free or at less than published tariff rates—Continued

ON NEW YORK CENTRAL RAILROAD—continued

Pullman car	Date	Occupants
Superb	Oct. 23, 1924	Director, Mo. Pac.
Do	Oct. 26, 1924	Do.
Colonial	Oct. 7, 1924	Director, Virginian.
Do	Oct. 8, 1924	Do.
Philadelphia	Jan. 15, 1925	Director, N. Y. C., and party.
Ideal	Jan. 9, 1925	Vice President, Mo. Pac., and wife.
Do	Jan. 10, 1925	Do.
Chicago	June 12, 1925	Director, L. A. & S. L., and party.
Patriot	Oct. 22, 1925	Director, Mo. Pac., and party.
Clysma	Oct. 20, 1925	Do.
National	Oct. 19, 1925	President, R. I. Trans. Co., and party.
Do	Oct. 21, 1925	Do.
New York	Nov. 20, 1925	President, Toledo & Western, and party.
Do	Nov. 22, 1925	Do.
Ideal	Nov. 30, 1925	President, R. I. Trans. Co.
Other than those listed were		
Boston		Director, N. P. and president, W. F. Exp.
Philadelphia		President, Chicago, North Shore & Milwaukee.
Pioneer		Director, Virginian.
Palm Beach		Do.
Colonial		Passenger traffic manager, Nor. Pac.
Commonwealth		Chairman of board, Reading.
Washington		President, Tremont & Gulf.
Do		Director, U. P. R. R.
Chicago		Vice president, N. O. G. N.
Patriot		General counsel, W. Va. No.
Columbia		President, Waycross & Georgia.
Mayflower		Director, Wabash Ry.
Constitution		President, Virginian.
New York		Treasurer, Durham & Southern.

By the commission.

[SEAL.]

GEORGE B. McGINTY,
Secretary.

U. S. GOVERNMENT PRINTING OFFICE: 1929

[fols. 72 & 73] Bond on appeal for $500.00, approved and filed October 15, 1930, omitted in printing.

[fol. 74] In United States District Court

[Title omitted]

Order Permitting Withdrawal of Narrative Statement—Filed Oct. 15, 1930

Upon application of the above named petitioners and the presentation of telegraphic agreement thereto by counsel for the defendants herein, it is by the court ordered that there may be withdrawn from the files and that there be withdrawn from the files herein the narrative statement heretofore filed, and that there be substituted therefor the narrative statement filed herein on this 9th day of October, 1930.

Dated at Kansas City, Missouri.

Kimbrough Stone, United States Circuit Judge.
Albert L. Reeves, Merrill E. Otis, United States District Judges.

[fol. 75] In United States District Court

[Title omitted]

Order Approving Statement of Evidence—Filed Oct. 15, 1930

The undersigned, being the three judges who tried the above-entitled cause, in which a final decree was entered on to-wit, the 19th day of September, 1930, do hereby certify that the substituted narrative statement of the evidence prepared by the petitioners and appellants, consisting of eleven pages, and the published report of the Interstate Commerce Commission in Docket No. 17757, In the Matter of Use of Private Passenger Train Cars, reported in 155 I. C. C. pages 775 to 811, inclusive, which have been filed for record in this cause on this 9th day of October, 1930,

together with the additional portions of the record attached to the præcipe filed by the United States of America and the Interstate Commerce Commission in the record in this cause on the 8th day of October, 1930, constitute an adequate statement of the evidence necessary for a determination of the issues in this cause upon appeal to the Supreme Court of the United States under Rule 75 of the Equity Rules, and also under rule 10 of the rules of the Supreme Court of the United States.

Kimbrough Stone, United States Circuit Judge.
Albert L. Reeves, Merrill E. Otis, United States District Judges.

[fol. 76] In United States District Court

In Equity. No. 1450

The Kansas City Southern Railway Company and Texarkana and Fort Smith Railway Company, Plaintiffs,

vs.

United States of America and Interstate Commerce Commission, Defendants

Before Stone, Circuit Judge, and Reeves and Otis, District Judges

Opinion—Filed Aug. 27, 1930

Per Curiam:

On November 4, 1929, the Interstate Commerce Commission issued its order No. 17757 requiring railroad companies, engaged in interstate commerce, on or before January 15, 1930, to cease and desist and thereafter abstain from the transportation or movement of private passenger train cars, including so-called office cars, of another carrier free or at other than published tariff rates. On July 30, 1929, the Commission issued an order prohibiting the issuance of car passes except for cars belonging to the issuing carrier or held by it under lease for use in its business as common carrier. It was provided in the order of July 30,

1929, that it should become effective August 1, 1929. The effective dates of both orders have been postponed pending the decision of this case.

Petitioners in this action seek to have enjoined the enforcement of the orders of November 4 and July 30, 1929, in so far as they apply to office cars, exclusively used as such, on the grounds: 1. That a railway company, in the transportation or movement of an office car of another carrier, acts in the capacity of a private carrier or bailee, and retains full freedom of contract in reference thereto, and for that reason is not subject to the Commission's orders; 2. That there was no evidence to support a finding [fol. 77] by the Commission that the free movement over a foreign line of the office car of another company occupied by the latter's officers and employees traveling on the business of that company, was unjustly discriminatory or unduly preferential and prejudicial; 3. That the act creating the Interstate Commerce Commission and acts amendatory thereof have been construed by the Commission and Congress as permitting movements of office cars over foreign lines under free passes.

1. The contention most earnestly pressed upon us by the petitioners is that a railroad company may as a private carrier enter into contracts on such terms as it choses for the transportation of whatever it does not publicly offer to carry as a common carrier. If it has no published tariff rates for the movement of office cars then, it is urged, it may contract to move them either free of charge or at some agreed rate and the Act creating the Interstate Commerce Commission gives it no jurisdiction with respect to such private carrier contracts. First of all then we proceed to examine the validity of this contention.

Undoubtedly it is true that a common carrier also may be in some situations a private carrier. Terminal Taxicab Company v. Katz, 241 U. S. 252; Santa Fe Railway v. Grant Bros., 228 U. S. 177; Chenery v. Employer's Liability Assur. Corp., (9 C. C. A.) 4 F (2) 826; Railroad Company v. Lockwood, 17 Wall, 357. It is true that notwithstanding the Interstate Commerce Act such a common carrier as a railroad company may in some situations contract to carry both persons and property as a private carrier. Santa Fe Railway v. Grant Bros., supra; Chenery

v. Employer's Liability Assur. Corp., supra. Thus a railroad company as a private carrier may contract to carry employees of a contractor engaged in doing work on its lines and the servants of an express company carrying express on its lines. And it may contract to carry persons beyond the terminus of its passenger line over a line [fol. 78] used generally only for the carriage of freight. If it holds itself out solely as a common carrier of freight it may enter into a contract as a private carrier to carry an individual as a passenger. "But when a carrier has a regularly established business for carrying all or certain articles, and especially if that carrier be a corporation created for the purpose of the carrying trade, and the carriage of the articles is embraced within the scope of its chartered powers, it is a common carrier, and a special contract about its responsibility does not divest it of the character." Railroad Co. v. Lockwood, supra, l. c. 377.

From a consideration of the cases cited and others dealing with the same subject we conceive that the right of a railroad company to contract to carry as a private carrier is limited to what lies outside the general scope of its business as a common carrier. If it holds itself out as a common carrier of passengers it certainly cannot divest itself of that character by entering into a special private carrier contract with some individual whose sole use of its facilities is travel from one point to another in pursuit of his own business. If it is a common carrier of freight it certainly cannot enter into a special contract with some individual who in his own business desires to ship goods of some particular character. Only when it goes outside of the general scope of its common carrier business can it contract as a private carrier.

It is not necessary to consider what might be the law if railroad companies did not hold themselves out as common carriers of private cars. They do. They have established tariffs for the transportation of such cars. That is a part of their common carrier business. It is within the scope of their chartered powers. As to such transportation therefore they cannot, if they would, divest themselves of the character of common carriers by any private contracts. The suggestion that some distinction may be made between one private car and other because the occu-

[fol. 79] pants of one transact business as they travel and the occupants of the other do not seems to us of little, if any, weight. If a lawyer on his way to argue a case before the Supreme Court in Washington takes along the record and the briefs and devotes every waking minute to the preparation of his argument and so to the transaction of his legal business is he therefore in some different catagory from another who goes only to see the sights? And if by some miracle that lawyer should own or be loaned a private car, have it fitted up with a law library, carry a stenographer along, agree that he will engage in his own business only as he travels, may a railroad then contract as a private carrier to transport his car free of charge while another must pay the established rates for the movement of his private car? What is done within the car by the occupants thereof certainly does not change the character of the service rendered.

It has been held indeed that a railroad may enter into a private carrier contract for the movement of a circus train. Chicago, M. & St. P. R. Co. v. Wallace, (7 C. C. A.) 66 Fed. 506. It has been so held because of the clear distinction between such an extraordinary, unusual service and the general business of a railroad as a common carrier. As was said in the cited case: "We know from common observation that (railroads) do not hold themselves out as common carriers of wild and domestic animals to be transported in the private cars of the owners, and loaded in a manner agreeable to the owners; persons, animals, horses, and other property being carried upon the same train, which is operated at irregualr times and seasons, at the convenience of the owners of such cars." Here is a marked distinction between extraordinary and usual railroad business. But the distinction arises from the great difference in the nature of the service required of the railroad. Certainly there is no such distinction between the movement of one private car carrying officials and employes of another railroad and of another private car carrying persons not connected with another railroad.

[fol. 80] Our view then is and we hold that the transportation of private cars, whether called and used as office cars or not, is within the general scope of the common carrier business of railroads and therefore not within that limited field within which they can contract as private carriers.

If we are right in this conclusion then it is unnecessary to consider the subordinate proposition that the Inter-state Commerce Commission has no jurisdiction to regulate the private carrier business of railroads.

2. Assuming that the movement of private cars, whether so called office cars or others, is within the general scope of the common carrier business of railroads and therefore subject to governmental regulation, we consider the second contention made by the petitioners, to wit: that "there was no evidence to support a finding by the Commission that the free movement over a foreign line of the office car of another company occupied by the latter's officers and employees traveling on business of that company, was unjustly discriminatory or unduly preferential and prejudicial." We dispose of the contention by saying that the always admitted fact that such private car movements have been free is alone sufficient evidence of discrimination. That there was also abundant evidence that this primary discrimination resulted in other concededly indefensible discriminations in the transportation of persons other than those engaged in the business of the railroad owning an office car may be disregarded, except that it may be said that the secondary evils alone perhaps are sufficient to justify the eradication of the root of those evils. It is not for us to inquire into the wisdom of the Commission's action, if it had the power to act.

3. The final contention of the petitioners that the Inter-state Commerce Commission Act and its amendments authorize the free movement of office cars belonging to other railroads remains. It is not urged that they do this expressly, and certainly they do not, but that they have been construed both by the Commission and the Congress [fol. 81] as so doing and that that construction has so entered into and become a part of them that only Congressional action can effect a change. The rule or statutory construction relied on is that referred to in Luckenbach S. S. Co. v. United States, 280 U. S. 173, and United States v. Jackson, 280, U. S. 183, and in a multitude of cases. "It is a settled doctrine * * * that, in cases of ambiguity, the judicial department will lean in favor of a construction

given to a statute by the department charged with the execution of such statute."

But before this rule is of value to him asserting it he must show two things: first, that the statute he relies on is ambiguous and, second, that the executive department charged with administering it has, not once or occasionally, but continuously and consistently given a certain construction to it.

Now the provisions of the Interstate Commerce Act to which petitioners especially point is that part of Section 22 of the original Act of 1887 (24 Stat. at Large 379) which reads: "Nothing in this act shall be construed * * * to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees." The argument is that this language conceivably may include both individual passes for officers and employees and also passes for office cars carrying officers and employees having individual passes. If that is a possible construction the language may be said to be ambiguous. It seems to us to be an impossible construction. It is perfectly clear that only the free transportation of individuals was contemplated by the language used.

If, as we think, the contended for construction is wholly unreasonable then what orders may have been made by the Commission is unimportant. In any event the only order to which petitioners point as evidence of that continuous and consistent interpretation called for by the rule of statutory constructions relied on is a single conference ruling under date of June 30, 1908, dealing with the form of passes and apparently recognizing passes for office cars. [fol. 82] That is altogether insufficient to show a continuous and consistent interpretation.

Our conclusion on the whole case is that the petitioner's bill should be dismissed.

An appropriate decree may be prepared and submitted for approval and entry.

[fol. 83] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 84 & 85] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION TO PRINT ENTIRE RECORD—Filed Oct. 17, 1930

Come now the appellants and adopt their assignments of error as their statement of the points to be relied upon, and represent that the whole of the record as filed is necessary for the consideration of the case.

Samuel W. Moore, Frank H. Moore, A. F. Smith, Cyrus Crane, Solicitors for Appellants.

Service of the foregoing statement of points to be relied upon and designation by appellants of the parts of the record to be printed, and receipt of a copy thereof, are hereby admitted and acknowledged.

United States of America, by Elmer B. Collins, Special Asst. to the Attorney General, October 17, 1930. Interstate Commerce Commission, by Daniel W. Knowlton, Its Solicitor, Interstate Commerce Bldg., Washington, D. C.

[fol. 86] [File endorsement omitted.]

Endorsed on cover: File No. 35,439. W. Missouri, D. C. U. S. Term No. 517. The Kansas City Southern Railway Company and Texarkana and Fort Smith Railway Company, appellants, vs. The United States of America and Interstate Commerce Commission. Filed October 18, 1930. File No. 35,439.